VERIFIED STATEMENT

OF

QIN LIU

TELECOMMUNICATIONS DIVISION

ILLINOIS COMMERCE COMMISSION

ILLINOIS COMMERCE COMMISSION ON ITS OWN MOTION

DOCKET NO. 04-0469

AUGUST 31, 2004

Q..... Please state you name and business address.

A. My name is Qin Liu, and my business address is 160 N. La Salle Street, Suite C-800, Chicago, Illinois 60601.

Q. Please describe your educational background.

A. I earned a BA in Mathematics in the People's Republic of China, and a PhD degree in economics from Northwestern University (Evanston) prior to joining the policy department of the Telecommunications Division at the Illinois Commerce Commission.

Q Have you previously testified before the Commission?

A. Yes. I have testified before this Commission in various proceedings, including ICC Dockets 00-0700, 01-0515, 01-0786, 01-0662, and 02-0560.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to address various disputes related to Network Interconnection method, reciprocal compensation, resale and hot cut.

LNP 3 & PRICE SCHEDULE 10/25

Statements of Issue:

Joint **Which Party's terms and conditions for *coordinated cutovers* should be included in the Agreement? (LNP3)**

Joint **What are the appropriate labor rates? (PRICE SCHEDULE 10)**

Joint **What are the appropriate rates for Coordinated Hot Cuts? (PRICE SCHEDULE 25)**

SBC Position

Q. What is CHC cutover and how is it different from a non-CHC cutover?

A. When an end user switches services from SBC to MCI and retains his or her existing telephone number (i.e., ports the number), both SBC and MCI need to make changes to physically perform the transfer of service from SBC switching facilities to MCI switching facilities (i.e., cutover). MCI may request a Coordinated Hot Cut ("CHC") or non-CHC cutover. In a CHC cutover request, SBC coordinates with MCI and does not remove the switch translation instructions from the SBC donor switch until SBC receives MCI's instruction to do so. In short, in a CHC cutover, SBC takes extra time and effort to coordinate to ensure no (or minimal) customer service interruption to the end user.[1] In non-CHC cutovers, MCI specifies the start time for the cutover of the number to be ported. SBC does not coordinate with MCI prior to performing cutovers. Since SBC does not make the cutover in coordination with MCI, it is somewhat more likely that customer service will be interrupted.

Compared to non-CHC cutovers, CHC cutovers take extra time and effort so as to make certain that both MCI and SBC perform the cutover at the same time. Accordingly, costs associated with CHC cutovers are higher.

Q. What is your understanding of SBC position on this issue?

A. SBC proposed language for Coordinated Hot Cut in the CHC Appendix. As I understand it, SBC takes the position that CHC cutovers take extra time and effort and

[1] *ICC Order 03-0239 at 107* and *SBC Ex. 3.0 (Chapman) at 105*.

that SBC should be compensated for the costs associated with this extra time and effort.

Q. Do you agree with SBC's position as set forth in SBC witness Carol Chapman's testimony?

A. Yes. I agree that SBC should be compensated for costs associated with the extra time and effort associated with CHC cutovers. I note that the Commission, in ICC Docket 03-0239 (AT&T/SBC Arbitration), addressed this issue. The Commission determined that SBC should be compensated for the extra time and effort associated with CHC cutovers:

> We agree with SBC [that if] the technicians take extra time to perform the necessary work involved, SBC should be compensated for the work. SBC should apply the labor rates set forth in the SBC's FCC Access Tariff No. 2.[2]

I see no basis in either SBC's or MCI's prefiled testimony in this proceeding to suggest that the Commission should alter its determination.

Q. Has MCI offered any criticisms of SBC proposed language?

A. Yes. MCI witness Sherry Litchtenberg contends that SBC's proposed language "improperly limits its obligations to provide MCI with nondiscriminatory services and permits SBC unilaterally to change mutually agreed upon scheduling" (for CHC cutovers).[3] Ms. Litchtenberg also contends that SBC's proposed CHC Appendix adds nothing to the parties' agreement and may be inappropriately used as justification for billing additional and unwarranted amounts to MCI."[4]

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2 Order ICC Docket No. 03-0239 at 107.
3 *MCI Ex. 6.0 Litchtenberg at 16.*
4 Id.

Q. Do you agree with Ms. Litchtenberg's criticism that SBC language allows SBC to suspend mutually agreed scheduling?

A. Yes, I agree that SBC's proposed language allows SBC to suspend mutually agreed upon scheduling in the event that SBC experiences an unexpectedly heavy workload, and is therefore unable to perform MCI's previously scheduled CHC cutovers. However, I do not find this language as unreasonable or inappropriate. I note that MCI should also be afforded the same treatment that SBC enjoys under the language set forth in the Appendix. That is, MCI should also be allowed to suspend mutually agreed upon scheduling, if unexpected occurrences arise. Ms. Chapman contends that MCI is already afforded this protection by the "standard provisioning processes in place today."[5] However, I do not find such protection for MCI in the SBC proposed CHC Appendix. While I do not find SBC's language affording protection to itself to be unreasonable, I believe that MCI should also be afforded the identical protection in the CHC Appendix. That is, the CHC Appendix should provide that MCI has the right to suspend mutually agreed upon scheduling in the event that an unforeseen event arises to prevent MCI from performing the previously scheduled CHC cutover(s).

Q. Do you agree with Ms. Litchtenberg that SBC's CHC Appendix "adds nothing to parties' agreement but may be seized as justification for billing additional and unwarranted amounts to MCI"[6]?

A. No. SBC's proposed CHC Appendix specifies the terms and conditions under which SBC and MCI provide CHC cutovers. In particular, it provides that SBC shall be compensated for the additional work associated with CHC cutovers pursuant to SBC's

[5] *SBC Ex. 3.0 Chapman at 108*.
[6] *MCI Ex. 6.0 Litchtenberg at 16*.

FCC Access Tariff No. 2. This is consistent with the Commission determination in ICC Docket No. 03-0239, which finds that SBC should be compensated for the extra work involved in performing CHC cutovers pursuant to SBC's FCC Access Tariff No. 2.[7]

Q. What are the problems associated with MCI's criticisms of SBC proposed rates for CHC cutover?

A. First, MCI witness Don Price argues that the appropriate CHC cutover rates should be the Commission-ordered TELRIC-based rates.[8] He then proposes, in testimony, a list of CHC rates that "are the comparable rates MCI proposed in Docket No. 03-0593" (TRO Batch Cut proceeding).[9] However, the Commission never entered a final order in that proceeding, regarding rates or any other matter.[10] In any case, the Commission certainly did no approve MCI's rate proposal. Mr. Price appears to equate rates ordered by the Commission with rates that MCI believes that the Commission *should* order.

Second, as Ms. Chapman points out, the rates presented by Mr. Price in testimony are for a *batch hot cut* process.[11] This seems to be consistent with Mr. Price's statement. Since, as Mr. Price states, the rates he proposes are the comparable rates that MCI proposed in the ICC Docket No. 03-0593, which dealt with issues related to *batch hot cuts*. The CHC cutovers in CHC Appendix are non-batch CHC cutovers --- "the standard FDT option and the standard CHC option."[12] The costs associated with batch hot cuts are generally lower than costs associated with non-batch cuts, inasmuch as the batch hot cut process contemplates a large number of lines being cut over to the CLEC

7 Order, ICC Docket No. 03-0239 at 107.
8 MCI Ex. 6.0 at 62.
9 Id.
10 The Batch Cut proceeding (03-0393) was suspended pursuant to USTA II decision.
11 SBC Ex. 3.0 at 109.

switch at the same time, thereby realizing economies associated with spreading certain costs over a larger number of lines. Therefore, it is not appropriate to apply rates that are "comparable rates MCI proposed in Docket No. 03-0593" for batch CHC cutovers to non-batch CHC cutovers, since these economies cannot be realized under the circumstances of standard, non-batch hot cuts.

MCI Position

Q. What is your understanding of MCI position on this issue?

A. As I understand it, MCI takes the position that its proposed language should be adopted and that SBC language should be rejected.

Q. What arguments does Ms. Litchtenberg advance in support of MCI proposed language?

A. Ms. Litchtenberg provides two arguments in favor of MCI's proposed language. First, she states that MCI's language is "virtually identical to the language that SBC agreed to in both Michigan and Texas."[13] Second, she states that MCI's language "is intended to ensure that customers' telecommunications services are not interrupted if a cutover cannot be completed as planned by MCI and SBC."[14]

Q. What is SBC's criticism of MCI proposed language?

[12] SBC Ex. 3.0 Chapman at 109.
[13] *MCI Ex. 5.0 Litchtenberg at 16*.
[14] Id.

A. Ms. Chapman contends that MCI proposed language does not accurately reflect the current cutover practices and is outdated.[15] Ms. Litchtenberg does not offer any rebuttal Mr. Chapman's contention. Neither does Ms. Litchtenberg provide a description of current cutover practices that would assist the Commission in resolving this matter.

Staff Analysis and Recommendation

Q. What is your recommendations regarding LNP3, Price Schedule10/25?

A. I recommend that the Commission adopt SBC's language, with certain modification. As explained above, while it is not unreasonable for SBC to incorporate language in the CHC Appendix that allows it to suspend a mutually-agreed upon scheduling of a CHC cutover, the CHC Appendix should also incorporate language to afford MCI the same protection in the CHC Appendix. Regarding CHC rates, the Commission has addressed issues related to CHC cutovers in ICC Docket No. 03-0239. There, the Commission determined that SBC should be compensated for the extra work involved in performing CHC cutovers.[16] The Commission also determined that it is appropriate for SBC to apply labor rates set forth in SBC's FCC Access Tariff No. 2.[17] None of the testimony prefiled by the parties in this proceeding suggests that the Commission should reach a different conclusion on this matter. Therefore, I recommend that

[15] *SBC Ex. 3.0 Chapman at 103-104.*
[16] Order, ICC Docket No. 03-0239 at 107.
[17] Id.

the Commission adopt SBC proposed language with the one modification I describe above.

RESALE 1

Statement of Issue:

Joint **May MCI resell, to another Telecommunication Carrier, services purchased from Appendix Resale?**

SBC Position

Q. What is your understanding of SBC's position on this issue?

A. As I understand it, SBC takes the position that MCI may not resell services purchased pursuant to the Resale Appendix to other telecommunications carriers for *the provision of telecommunications services by those carriers*. MCI, however, may resell services to telecommunication carriers *for use by those carriers as end users of the services* ("carrier end users"), but MCI must resell SBC services to these *carrier end users* at the same rates, terms and conditions as it sells to *non-carriers end users* (i.e., end users who are not telecommunication carriers).[18] In short, SBC takes the position that MCI must resell SBC's services purchased pursuant to the Resale Appendix *on a non-discriminatory basis*, and *directly to end user customers*.

Q. What support does SBC provide for its position?

[18] *8/10/04 DPL, Issue Resale 1; SBC Ex.1.0 Pellerin at 5.* I note that SBC proposed limiting language on MCI for reselling to carrier end users is not contained in DPL1 (8/10/2004) but is presented in Ms. Pellerin's testimony (SBC Ex. Pellerin at 5).

A. SBC witness Patricia Pellerin explains that Section 251(c)(4) of the 1996 Telecommunication Act ("Act") provides that a competitive local exchange carrier (CLEC) may be restricted from selling services to a different category of subscribers, and that telecommunications carriers are a different category of subscribers than end users (carrier or non-carrier end users).[19] Thus, she concludes that, while MCI may purchase, at a wholesale discount, the set of SBC's telecommunications services that SBC offers, at retail, to its end user subscribers and resell these services to the same set of *end user* subscribers, MCI may not resell these services to a different category of subscribers.[20] Specifically, MCI may not resell SBC's retail services to telecommunications carriers for the provision of telecommunication services (i.e., not for their use as end users).[21]

Q. Do you agree with Ms. Pellerin's cross-class selling argument?

A. I agree with her in part. Although I am not an attorney,[22] I agree with Ms. Pellerin that Section 251(c)(4) allows state commissions to prohibit cross-class selling – reselling services offered at retail to one class of subscribers to a different class of subscribers. Section 251(c)(4) itself, however, does not itself prohibit any or all cross-class reselling.

The FCC agreed that Section 251(c)(4) permits states to prohibit resellers from selling residential services to business customers and to prohibit the resale of Lifeline

[19] *SBC Ex 1.0 Pellerin at 6-7.*
[20] Id.
[21] Id.
[22] I note that Ms. Pellerin is not an attorney, either. SBC Ex. 1.0, Sched. PHP-1.

(and other means-tested) services to end users not eligible for such services.[23] The FCC, however, did not conclude that prohibitions on all types of cross-class selling were permitted. For example, the FCC was not inclined to "allow the imposition of restrictions that could fetter the emergence of competition."[24] Thus, SBC's proposed prohibition on cross-class resale is something that the Commission can order under FCC rules, but need not order.

Q. Do you agree that SBC's restriction on reselling to a carrier end user is reasonable?

A. Yes. When a carrier purchases telecommunications services for its own use, the carrier is an end user of the services. A carrier is not differently situated from other end users of services when it purchases the services for its own use as an end user of the services. The nondiscrimination provisions in Sections 251(b)(1) require that a carrier resell to a carrier end user at the same rates, terms and conditions as it resells to non-carrier end users.[25]

Q. In your opinion, is SBC's restriction on MCI for reselling to carriers for the provision of telecommunications services is necessarily in violation of Section 251(b)(5)?

A. No. Under the non-discrimination provision in Sections 251(b)(1) and 251(c)(4), SBC may not restrict MCI's ability to resell services to third party carriers who purchase the services for its own use as end users of the services (carrier end user customers). However, carriers that purchase the resold services for the provision of

[23] *Local Competition Order*¶ *962;* 47 C.F.R. §51.613.
[24] Id., ¶ *964*.
[25] 47 U.S.C. §§251(b)(1); 251(c)(4).

telecommunications services (to end users or to other carriers) are clearly a different class of subscribers from end users of the services. Though I am not a lawyer, in my opinion, Section 251(b)(1) does not prohibit such a cross-class selling restriction. I further note that whether Section 251(b)(5) prohibits such a cross-class selling restriction is a legal matter, and Staff reserves the right to offer arguments in on this issue in its several Briefs.

Q. Would permitting MCI to resell the wholesale-discounted services to a carrier for the provision of telecommunications services have any potential undesirable effects?

A. Yes. Permitting MCI to resell to a carrier for the provision of telecommunications services might, potentially, frustrate cross-class selling restrictions that have been determined allowable. For example, third party carriers presumably have the ability to determine what class of end users to provide services to. They might, for example, sell MCI-provided residential services to end users as business services — producing a circumstance where MCI obtains wholesales residential service from SBC that is ultimately provided to a business customer, thus circumventing the residential/business cross-class reselling prohibition. Therefore, the cross-class restriction SBC proposes to apply based on Section 251(c)(4) is not inherently unreasonable or inappropriate.

MCI Position

Q. What is your understanding of MCI's position?

A. As I understand it, MCI takes the position that it should be allowed to resell, to other

telecommunication carriers, services purchased under the Resale Appendix.[26] Specifically, MCI's language does not prohibit MCI from reselling services, purchased pursuant to the Resale Appendix, to a third-party carrier for the third-party carrier to provision telecommunication services to customers (i.e., not for the carrier's own use as an end user of the service).[27]

Q. What arguments has MCI advanced in support of its position?

A. The principal justification provided by Mr. Price is that SBC's restriction is prohibited by the 1996 Telecommunication Act and FCC rulings.[28] First, Mr. Price contends that there are only two permissible prohibitions on cross-class reselling: (1) residential services to business customer, and (2) Lifeline (and other means-tested) services to end users not eligible for such services. SBC's restriction falls outside of the two permissible prohibitions and thus is prohibited by the FCC rulings.[29] Second, Mr. Price contends that, under Section 251(b)(1), MCI cannot refuse to resell the resale services, obtained from SBC at wholesale discount, to a third carrier for the provision of telecommunications services to customers. SBC's restriction, which prohibits the creation of reseller chain, thus will "cause MCI to violate the requirements of the Telecom Act."[30]

Q. Do you agree with Mr. Price that SBC's restrictions are necessarily outside the scope of permissible prohibition on cross-class reselling and in violation of the Act and prohibited by the FCC rulings?

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26 *DPL Resale 1, Resale Appendix 1.3 and MCI Ex. 6.0 Price at 103-107.*
27 Id.
28 *MCI Ex. 6.0 Price at 103-106.*
29 *MCI Ex. 6.0 Price at 103-104.*
30 *MCI Ex. 6.0 Price at 106.*

A. No. I agree with Mr. Price that Section 251(c)(4)(B) allows (state commissions to prohibit cross-class reselling. I, however, disagree with Mr. Price that the definition of cross-class reselling, referred to in Section 251(c)(4)(B), is limited to two specific types: (1) residential services to business customers, and (2) Lifeline (and other means-tested) services to end users not eligible for such service.[31] I am unaware of any support in the Act itself, or in FCC rules or orders for Mr. Price's proposed limitations on this definition.

Section 251(c)(4)(B) allows state commissions to impose restrictions on cross-class reselling. As Mr. Price notes, the FCC concluded that *Section 251(c)(4)(B) permits state Commissions to make* prohibitions on reselling residential services to business customers and prohibitions on reselling Lifeline (or any other mean-tested) services to end users not eligible for such services.[32] Contrary to Mr. Price's contention, the FCC does not preclude state commissions from making prohibitions on any other types of cross-class reselling.[33] While presuming prohibitions or restrictions on other types of cross-class reselling unreasonable,[34] the FCC finds that the incumbent LEC may "rebut this presumption (that restrictions on cross-selling are unreasonable) by proving to the state commission that the class restriction is reasonable and nondiscriminatory."[35] That is, the Commission may make the determination that SBC's

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31 *MCI Ex. 6.0 Price at 104*.

32 *The Local Competition Order at ¶962*.

33 FCC Rule 51.613 provides that: "A state commission may permit an incumbent LEC to prohibit a requesting telecommunications carrier that purchases, at wholesale rates for resale, telecommunications services that the incumbent LEC makes available only to residential customers or to a limited class of residential customers, from offering such services to classes of customers that are not eligible to subscribe to such services from the incumbent LEC." 47 C.F.R. §51.613.

34 The *Local Competition Order*, ¶964.

35 Id.

proposed restriction is reasonable and nondiscriminatory if SBC is able to present evidence that supports such a conclusion. Therefore, Mr. Price's assertion that residential/business and Lifeline (and other mean-tested) services are the "sum of the permissible resale prohibition"[36] is not supported by the Act or FCC rulings.

Q. Do you agree that SBC's restriction on reseller chains would necessarily fetter competition and harm end user customers, or are otherwise unreasonable or discriminatory?

A. No. The FCC states that it is "not inclined to allow the imposition of restrictions that could fetter the emergence of competition."[37] Mr. Price claims that this supports his conclusion that FCC rulings prohibit any cross-class reselling, other than the two listed above.[38] Mr. Price, however, does not demonstrate why and/or how a prohibition on a reseller chain (i.e., prohibiting a reseller from reselling to another reseller or a third carrier) would in any way "fetter the emergence of competition". More importantly, Mr. Price has failed to respond to SBC's concerns that MCI's language could frustrate cross class selling restrictions that have already been determined allowable.

Q. In your opinion, does permitting the resale of wholesale-discounted services to a third carrier (for the provision of telecommunications services) necessarily promote competition, or alternatively, does SBC's restriction necessarily fetter competition?

A. No. In my opinion, SBC's restriction prohibiting MCI from reselling the wholesale-discounted services to a third carrier (for the provision of telecommunications services) does not necessarily fetter competition. The Telecommunication Act and FCC rules

[36] *MCI Ex. 6.0 Price at 104.*
[37] *Local Competition Order at ¶964.*
[38] *Local Competition Order, ¶962, MCI Ex. 6.0 Price at 104.*

406 mandate that the wholesale rates charged by the incumbent LECs should be based on
407 retail rates charged (by the ILECs) to end users, excluding costs associated with
408 marketing, billing, collection, and other activities that can be avoided by ILECs when
409 providing services at wholesale.[39] The creation of resale market can benefit end user
410 customers by introducing competition in marketing, billing, collection, and other
411 functions that help to reduce the costs of provisioning resold services to end users,
412 which in turn helps to lower rates charged to end users. SBC's proposed prohibition on
413 reseller selling to another reseller or a third carrier permits resellers who purchase SBC
414 services at wholesale discounts to resell these wholesale-discounted services to end
415 users, but does not permit resale to a third carrier. Put differently, it does not allow the
416 creation of a reseller chain between SBC and end users.

417 It is unclear how SBC's proposed prohibition would fetter competition and harm
418 end user customers, particularly in view of the fact that each *certified*
419 telecommunication carrier has the option of obtaining the wholesale-discounted services
420 directly from SBC (i.e., not indirectly through other resellers). In addition, transaction
421 cost theorists would likely argue that the longer the chain of resellers between SBC's
422 services and end users, the more transaction costs would occur, which ultimately would
423 translate into higher rates charged to the end users and thus harm end users.[40]

424 Moreover, as explained above, unrestricted resale of SBC's wholesale-

[39] *47 U.S.C. § 252(d)(3),* 47 C.F.R. §§51.607, 51.609; *Local Competition Order at ¶908*.

[40] On the other hand, the potential harm of reseller chains, in the form of higher rates being charged to end user customers, is to some extent, limited by market force. If, for example, the reseller chain results in end user rates higher than SBC's retail offerings, the end user customers would not be expected to purchase services from the end-of-chain resellers, and may instead avoid the reseller chain by, say, purchasing SBC's retail services directly. Therefore, the potential harms to end users in the form of higher rates charged to end users would be, to some extent, curtailed by market force.

discounted services to carriers for the provision of telecommunications services would have undesirable effects of allowing carriers to circumvent cross-class selling restrictions that have been determined allowable.

Q. Has MCI demonstrated that SBC's restriction would actually harm MCI or end user customers or competition?

A. No. Mr. Price does not demonstrate how a prohibition on *reseller chains* would harm MCI, end user customers, or competition, particularly in view of the fact that a certified carrier has the option of purchasing the wholesale-discounted services directly from SBC at the same wholesale-discounted rates (SBC retail rates excluding the avoidable costs). Rather, Mr. Price draws support for his position on this issue on legal ground – i.e., SBC's restriction on cross-class reselling (or reseller chains) is prohibited by the Act and FCC rulings.

Q. In addition to the contention that Section 251(c)(4) and FCC rulings prohibit SBC's cross-class selling restriction, has Mr. Price provided any other argument against SBC's restriction on reseller chain?

A. Yes. Mr. Price further contends that MCI, under *Section 251(b)(1)*, cannot refuse to resell its telecommunication services.[41] Mr. Price states that, to the extent that MCI purchases wholesale-discounted services from SBC pursuant to the Resale Appendix, these constitute MCI's telecommunication services, and thus MCI cannot refuse to resell these services to other resellers or a third carrier.[42] Accordingly, SBC's restriction on reseller chains would cause MCI to "violate the requirements of the Telecom Act."[43]

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41 *MCI Ex. 6.0 Price at 105-6.*
42 Id.
43 Id.

Q. How does SBC respond to Mr. Price's argument based on Section 251(b)(1)?

A. Ms. Pellerin contends that Section 251(b)(1) of the Act applies to the resale of services at retail, and is not applicable to services at wholesale.[44] Thus, Ms. Pellerin contends that Mr. Price's reliance on Section 251(b)(1) is inappropriate.[45]

Ms. Pellerin agrees that "telecommunications services" are services offered to *the public* and *on a common carrier basis*.[46] Ms. Pellerin, however, disagrees with Mr. Price on whether common carrier services may be offered at wholesale.[47] Ms. Pellerin appears to argue that common carrier services must be offered to end user customers (i.e., retail services), and that services not offered to end user customers do not constitute common carrier services (and thus not telecommunication services).[48] Therefore, Ms. Pellerin contends that the services that MCI purchases from SBC at wholesale discount do not constitute telecommunications services.[49] Accordingly, Ms. Pellerin argues that the provision in Section 251(b)(1)[50] prohibiting unreasonable or discriminatory restrictions on resale is not applicable to the wholesale-discounted services that MCI purchases from SBC.

Q. In your opinion, is Ms. Pellerin's interpretation of "telecommunication service" consistent with the FCC's Triennial Review Order?[51]

A. No. The FCC explicitly stated in the TRO that "[t]he Commission has interpreted

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44 *SBC Ex. 1.0 Pellerin at 10.*
45 Id.
46 Id. at 11-12.
47 Id. at 11-13.
48 Id.
49 Id.
50 47 U.S.C. §251(b)(1).
51 TRO, ¶¶150, 152.

'telecommunications services' to mean services offered on a common carrier basis…" and "[c]ommon carrier services may be offered on a retail or wholesale basis …[.]"[52] Ms. Pellerin's contention that common carriers services must be offered to end user customers (i.e., retail services), is directly contrary to the FCC's explicit statements in the TRO.

Ms. Pellerin also argues that the FCC's explicit statements regarding common carriers services are intended in the context of UNEs, not in the context of resale. She, however, offers no arguments as to why two separate definitions of telecommunications services for UNEs and for resale, respectively, are justified. Likewise, Ms. Pellerin has not presented any FCC definition of telecommunications services that is specially tailored for resale and that explicitly excludes wholesale services from common carrier services.

Q. If the FCC definitely addressed the definition of telecommunications services, is this issue then resolved according to federal law?

A. No. In its *USTA II* decision, the DC Circuit Court vacated those sections of the TRO that includes the FCC pronouncements on the definition of telecommunications services.[53]

Q. Did the DC Circuit Court indicate in its USTA II decision whether the definition of telecommunications services should exclude wholesale services?

A. No. Nothing in the USTA II decision indicates that the FCC was incorrect in including wholesale services as common carrier services and identifying wholesale services as

[52] TRO, ¶¶150, 152.
[53] *USTA II at 57-58*.

telecommunications services. Specifically, the DC Circuit Court's criticisms of the FCC's reasoning were directed at the fact that the FCC interpreted telecommunications services in an overly *narrow* manner.[54] Specifically, the DC Circuit Court found that "[t]he argument that long distance service are not 'telecommunications services' has no support."[55] Therefore, if the TRO and the USTA II decision provide any guidance, these orders support the notion that telecommunications services include wholesale services.

Q. Do you then agree with Mr. Price that MCI cannot, under Section 251(b)(1), refuse to resell the wholesale-discounted services purchased from SBC to another reseller or a third carrier?

A. No. Mr. Price contends that MCI cannot, under section 251(b)(1), refuse to resell the wholesale-discounted services it purchases from SBC to another reseller or a third carrier (i.e., non-end-users).[56] As a result, Mr. Price asserts that SBC's restriction would cause MCI to violate the requirements of Section 251(b)(1).[57]

As noted earlier, Staff contends that whether Section 251(b)(5) prohibits such a cross-class selling restriction is a legal matter, and Staff reserves the right to offer arguments on this issue in its several Briefs. Though not a lawyer, I am of the opinion that there is no explicit requirement, under Section 251(b)(1) or any other sections of the Act, to permit or prohibit a reseller from reselling to another reseller (or a third carrier). In fact, if SBC provides services to MCI for the purposes of supplying end users subscribers with services, then it is not "unreasonable" for MCI to refuse to supply such

54 *USTA II at 57*.
55 Id.
56 MCI Ex. 6.0 at 106.

third party carriers who are not end users of such services – particularly where such provision could, for example, result in a business end user purchasing resold SBC residential service.

To my knowledge, neither the 1996 Act nor the FCC has ever explicitly addressed or discussed the issue of resale to resellers (i.e., reseller chains). The goal of the Act is to promote competition, which would ultimately benefit end user customers. The introduction of resellers (or a resale market) would enhance competition in marketing, billing and collection, and other functions, which would help to lower rates charged to end user customers.[58] It is not obvious to me, however, how additional layers of resellers (i.e., reseller chains) would enhance competition and benefit end user customers, especially in view of the fact that any certified telecommunications carrier has the option of obtaining the resale services directly from SBC, at the same wholesale discount, pursuant Section 251(c)(4), without having to go through other resellers. By the same token, it is not clear how prohibiting a reseller from reselling to other resellers would fetter competition or harm end user customers. In addition, there is no evidence in this proceeding to indicate how and/or whether allowing a reseller chain (i.e., allowing a reseller to resell to other resellers) would enhance competition or how and/or whether prohibiting a reseller chain would fetter competition and harm end user customers. In light of these omissions, what the Commission is left with is a number of practical objections raised by SBC in response to MCI's proposal.

[57] Id.

[58] Resale is also an important entry strategy for many new entrants, especially in the short-term when they are building their own facilities. See *Local Competition Order at ¶ 907*.

Q. What practical objections does SBC have to MCI's proposed language?

A. In addition to arguing that SBC's restriction is reasonable and non-discriminatory, Ms Pellerin also presented a list of perceived undesirable consequences of MCI's proposed language.[59] First, MCI' proposed language would allow a third carrier, which has no contractual agreement with SBC, to resell SBC's services.[60] The third carrier would not be bound by the contractual agreement ("Agreement") between MCI and SBC. This third carrier, for example, would not be bound by Section 20.2 of GTC of the Agreement, which prohibits resellers from using the SBC logo or the SBC Illinois brand name. Similarly, the third carrier would not be bound by Section 4.3 of the Resale Appendix or SBC resale tariffs, which prohibit cross-customer-class selling.[61]

Second, MCI's language permitting MCI to resell to a third carrier for the provision of telecommunication services could lead to an end user customers receiving telecommunication services from an uncertified carrier (a carrier not certified by the Commission to provision telecommunication service in Illinois).[62] As a result, a third carrier may *illegally* resell SBC services (i.e., reselling SBC services without the certification).[63]

Third, MCI's language may also allow carriers (including MCI) to circumvent restrictions agreed upon by parties and contained in Section 4.10 of the Resale Appendix.[64] Section 4.10 of the Resale Appendix prohibits MCI from purchasing SBC retail services, at a wholesale discount, for MCI's use or for the use of any of MCI's

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59 SBC Ex. 1.0 at 7.
60 Id.
61 Id.
62 Id.
63 Id.

affiliates and/or subsidiaries, or for the use of MCI's parent or any affiliates and/or subsidiary of MCI's parent company.[65] MCI's proposed language, Ms. Pellerin argues, would allow MCI to circumvent this restriction by selling the resale services, purchased pursuant to the Resale Appendix at a wholesale discount, to a third carrier and then purchasing this service back from this third carrier.[66]

Q. Do Ms Pellerin's arguments regarding practical concerns arising from MCI proposed language have merit?

A. I do not necessarily dispute Ms. Pellerin's assertion that there are practical concerns arising from the MCI proposed language. However, Ms. Pellerin does not argue or demonstrate that the *only* alternative to avoid those undesirable consequences is to prohibit MCI from reselling to a carrier for the provision of telecommunications services. In other words, Ms. Pellerin does not explain why additional contractual language, instead of prohibiting reseller chain, cannot address the practical concerns SBC raises.

Staff Analysis and Recommendation

Q. What is your recommendation regarding SBC's restriction on reselling to carrier end users?

A. The Commission should adopt SBC's proposed language regarding reselling to carrier end users. As explained above, a carrier, when purchasing services for its own use as end user of the service, is simply an end user of the services. In this capacity, the carrier end user is not situated differently than non-carrier end users. The non-

[64] Id. at 7-8.
[65] Resale Appendix Section 4.10; SBC Ex. 1.0 at 7-8.

discrimination provision in Section 251 requires that MCI resell to carrier end users at the same rates, terms and conditions as it resells to non-carrier end users. Therefore, the parties should include this restriction in their ICA.

Q. What is your recommendation regarding SBC's restriction on reselling to a third carrier for the provision of telecommunications services?

A. I recommend that the Commission permit MCI, *under certain restrictions*, to resell services, obtained from SBC at wholesale discount, to other resellers. As explained above, unrestricted resale by MCI to third carriers for the provision of telecommunications services might have undesirable effects. For instance, it may create circumstances in which MCI obtains wholesale *residentia*l services from SBC that is ultimately resold or provided to a business customer, thus circumventing the residential/business cross-class reselling prohibition. Therefore, some restrictions are necessary to address the potential adverse effects (including those raised by SBC) arising from reseller chains. I, therefore, recommend that the Commission impose the following restrictions on the reselling SBC's wholesale-discounted services to a third carrier for the provision of telecommunication services:

(1) Any carrier, who purchases SBC's wholesale-discounted services through MCI, will be subject to the terms and conditions as MCI under MCI/SBC Agreement, including, but not limiting to, not using SBC logo or name brand;

(2) MCI will be held responsible for any breach or violation of the terms and conditions (as provided in MCI/SBC Agreement) by such a third carrier, and

(3) MCI shall not circumvent the prohibition in Section 4.10 of the Resale Appendix by purchasing back (directly or indirectly), for its own use, SBC's wholesale-discounted services, from a carrier, who obtained the services (directly or indirectly) from MCI.

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[66] Id.

For instance, if MCI/SBC Agreement prohibits the offering of Centrex services to unaffiliated residential customers, MCI shall not purchase Centrex services from SBC at wholesale discount and resell them to unaffiliated residential customers. Moreover, any third carrier, which purchases SBC's resale services from MCI (directly or indirectly), shall not offer the Centrex services to unaffiliated residential customers either. Similarly, MCI and any of the carriers down the reseller chains shall not resell residential services (obtained by MCI from SBC) to business customers.

RESALE 4

Statement of Issue:

Joint Should MCI be permitted to aggregate traffic for multiple end user customers onto a single service?

SBC Position

Q. Please describe your understanding of SBC position on this issue?

A. As I understand it, SBC takes the general position that its resale service offerings should mirror its retail services offerings to its own end user customers.[67] Specifically, MCI should be required to sell SBC resale offerings on the same terms and conditions as provided in SBC retail tariff.[68] MCI should be permitted to aggregate traffic to multiple end user customers only to the extent that such an aggregation of traffic is permitted by

[67] SBC Ex. 1.0 Pellerin at 17-18.
[68] Id.

SBC's retail tariff.

Q. Can you provide an example of the situation to which Ms. Pellerin refers?

A. I can. One way to aggregate multiple (affiliated or unaffiliated) end user customers is to service these end user customers over a Centrex system. Ms Pellerin would argue that, if SBC offers Centrex services to multiple un-affiliated end user customers at retail, SBC should be required to offer these Centrex services at wholesale to its resellers (MCI in this case) only on the same terms and conditions as provided in its retail tariff. The resellers (or MCI), in turn, may resell the Centrex services to unaffiliated end user customers, but only on the same terms and conditions as provided in SBC retail tariff.

As I understand it, SBC's position would be that, if SBC does not offer Centrex services to its unaffiliated end user customers, it should not be required to offer such services to MCI (or any other resellers) pursuant to Section 251(c)(4). That is, MCI would not be permitted to purchase Centrex service SBC provides under certain terms and conditions only to affiliated end users and then resell those services to unaffiliated end users.

Q. What support does Ms. Pellerin offer for her position?

A. Ms. Pellerin contends that "MCI is entitled to resell those telecommunications services SBC Illinois offers at retail, not something different."[69]

Q. Has the Commission previously considered this issue?

[69] SBC Ex. 1.0 Pellerin at 17.

A. Yes. The Commission approved SBC's currently effective Resale Tariff, which contains restriction languages on aggregation of services. Specifically, the General Terms and Conditions (GTC) of SBC's Resale Tariff provides that aggregation of services is permitted on the same basis as it is permitted under its retail tariff. Aggregation of multiple end user customers (i.e., with multiple accounts) is prohibited.[70]

Q. Do you agree with Ms Pellerin that SBC's resale offerings pursuant to Section 251(c)(4) should mirror its retail services offerings, and should, therefore, be offered by resellers subject to the same terms and conditions as provided in its retail tariff?

A. Yes, I do.

Q. Please explain the basis of your support of SBC position on this issue.

A. Section 251(c)(4) requires that SBC offer, for resale at wholesale discount, any services that it provides at retail to its end user customers. It does not, however, require SBC (or any ILEC) to offer for resale any services that it does not provide at retail to its end user customers. This is further confirmed by the wholesale pricing guideline in the Act. Section 252(d)(3) provides that SBC wholesale rates be set to equal to SBC retail rates excluding marketing, billing, collection and other costs that will be avoided by SBC when it provides the services at wholesale as compared to providing the services at retail.[71] If a particular service is not offered by SBC at retail to its end user customers, SBC does not have a retail rate for that service. Thus, it would not possible to calculate the wholesale rate pursuant to Section 252(d)(3) of the Act. Therefore,

[70] SBC Ex. 1.0 Pellerin at 20.

both Section 251(c)(3) and Section 252(d)(3) clearly provide that SBC is only required to offer, for resale, any services that it offers, at retail, to its end user customers under the same terms and conditions as provided in SBC retail tariff. Accordingly, service aggregation is only permitted for resellers (MCI) to the extent that it is permitted for SBC retail customers (i.e., permitted by its retail tariff).

MCI Position

Q. Please provide your understanding of MCI position on this issue.

A. As I understand it, MCI simply opposes SBC's restriction on aggregation of services.

Q. What arguments has Ms. Litchtenberg provided to support her position?

A. Ms. Litchtenberg provided two arguments to support her opposition to SBC's proposed restriction on aggregation of services. First, Ms. Litchtenberg argues that such restriction "reverses the FCC's position that resale aggregation restrictions are presumptively unreasonable" without rebutting this presumption.[72] Thus SBC's proposed language or restriction should be found unreasonable. Second, Mr. Litchtenberg contends that SBC restriction is unreasonable and anti-competitive.[73]

Q. Do you agree with Ms. Litchtenberg's argument that SBC's restriction is unreasonable because it is at odds with the FCC's presumption?

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[71] *Section 252(d)(3);* 47 C.F.R. §§51.607, 51.609; *Local Competition Order, ¶ 908*.
[72] MCI Ex. 5.0 Litchtenberg at 4-5.
[73] Id.

A. No. It is correct that the FCC concludes that volume discounts are presumptively unreasonable in the *Local Competition Order*.[74] The FCC, however, does not preclude a state commission from permitting such restriction if it finds such a restriction is reasonable and non-discriminatory.[75] Here it clearly provides that resellers are able to take advantage of the same volume discounts as SBC retail end user customers are permitted to do so. SBC's proposal is, therefore, not of necessity unreasonable or discriminatory.

Q. Do you agree with Ms. Litchtenberg that SBC's restriction on service aggregation by resellers prevents MCI from receiving volume discounts that SBC is able to offer to its customers?

A. No, I do not. Based on my understanding of SBC's position, SBC's proposed language permits aggregation of services by resellers (MCI in this case) to the extent that SBC's retail tariffs permit such service aggregation by SBC's own end user customers. In other words, SBC's proposed language permits MCI to resell SBC's retail services, but only under the same terms and conditions as provided in SBC's retail tariff. Therefore, Ms. Litchtenberg is incorrect in concluding that SBC's proposed language prevents MCI from receiving what SBC's own end user customers are able to receive.

Q. Do you agree with Ms. Litchtenberg that SBC's restriction on service aggregation is anti-competitive?

A. No. Ms. Litchtenberg contends that SBC's proposed restriction would unreasonably

[74] *Local Competition Order, ¶ 953*.
[75] Id., ¶964.

limit the volume discount that MCI (as a reseller) would be eligible to receive.[76] Ms. Litchtenberg further contends that MCI would be able to offer resale services to end users more efficiently if SBC does not impose restrictions on service aggregation (or volume discount).[77] Thus SBC's restriction prevents MCI from attaining operational and cost efficiency. Ms. Litchtenberg may be correct in asserting that MCI (as a reseller) might be able to serve its end user customers more efficiently if there is no restriction on service aggregation. For example, MCI (as reseller) may choose to serve multiple unaffiliated end user customers over one Centrex system.[78] However, Ms. Litchtenberg misses the point. First, Ms. Litchtenberg appears to have misinterpreted the explicit and clear requirements of Section 251(c)(4) and Section 252(d)(3). Section 251(c)(4) requires that SBC offer for resale any services that it offers at retail to end user customers. It does not require SBC to offer for resale a service that SBC does not offer, at retail, to its end user customers. In addition, Section 252(d)(3) clearly requires that SBC's wholesale prices be based on SBC's retail rates excluding marketing, billing, collection and other costs avoided when SBC provides its service at wholesale as compared to at retail. This reaffirms that SBC is only required to offer, at wholesale, any services it offers at retail to its end users. MCI's proposal, however, would enable to MCI to obtain a wholesale rate to serve a group of customers that is based a retail rate that does not exist for the services SBC offers to those same customers.

Second, Section 251(c)(4) resale service is one of the methods that competitive LECs can use to compete with SBC in the local exchange service market. While resale

[76] MCI Ex. 5.0 at 5.
[77] Id. at 6.

is the most efficient method for many telecommunications carriers to compete in the local exchange market, it may not be the most efficient means to compete for all telecommunications carriers. Some carriers, for example, might find it more efficient to compete by purchasing UNEs from SBC. Some other carriers might find it more efficient to invest in facilities to compete in the local exchange market. MCI, like any other CLECs, selects the method(s) that is most efficient for it to compete and best fits its own business plan. MCI, however, cannot, under Section 251(c)(4), require SBC to tailor its retail services offerings to fit MCI's needs for resale services to effectuates *its* business plan, or require SBC to offer for resale a service that SBC does not offer at retail for its own end user customers.

Third, the Act clearly does not require that SBC tailor its retail services offerings to fit the needs of resellers. Likewise, the Act does not require SBC to offer for resale a service that it does not offer at retail to its end user customers. The Act simply and clearly requires that SBC offer for resale a service that it offers at retail to its own end user customers. MCI proposes language, however, would require that SBC offer, for resale, a service that SBC does not offer, at retail, to its own end user customers. This clearly goes beyond the requirements under Section 251(c)(4), and is thus unreasonable.

Staff Analysis and Recommendation

Q. What is your recommendation regarding RESALE 4?

[78] Id.

A. I recommend that the Commission adopt SBC's proposed language. As I explained above, Section 251(c)(4) clearly requires that SBC offer for resale a service that it offers at retail to its end user customers. It does not require that SBC offer for resale a service that SBC does not offer at retail for its own customers. Likewise, it does not require that SBC tailor its retail service offering to fit the business plans of resellers. MCI's proposed language clearly goes beyond the requirement of Section 251(c)(4). While the FCC establishes a presumption of unreasonableness in the *Local Competition Order*, the FCC does not preclude a state commission from finding that such restriction is, nonetheless, reasonable and nondiscriminatory. I recommend that the Commission adopt SBC's proposed language.

RESALE 8

Statement of Issue:

Joint Which Party's proposal for the resell of Customer Specific Arrangement (CSA) should apply?

SBC Position

Q. Please describe your understanding of SBC position on issue RESALE 8?

A. As I understand it, SBC takes the position that its proposed language should be adopted because it is "more specific and provides appropriate detail regarding MCI's assumption

of existing retail contracts."[79]

Q. Does Ms. Pellerin state why she considers SBC's proposed language to be more appropriate?

A. Yes, she does. First, she states that SBC's language puts explicit limits on the assumption of existing retail contracts.[80] According to Ms. Pellerin, SBC's proposed language explicitly states that MCI may not assume contracts that are expressly prohibited and that MCI may not assume contracts for grandfathered and/or sunsetted services.[81] MCI language in contrast, does not contain such limiting language.[82] Second, SBC's language explicitly states the exact wholesale discount applicable to a contract assumption while MCI language does not.[83] Third, SBC's language sets specific terms and conditions, including termination liability, that apply when MCI elects to terminate an assumed contract.[84]

MCI Position

Q. Please describe your understanding of MCI's position on RESALE 8?

A. As I understand it, MCI takes the position that its proposed language is straightforward and that SBC proposal adds unnecessary or ambiguous language.[85]

Q. Does Ms. Litchtenberg offer any other criticisms of SBC's language beyond its being unnecessary or ambiguous?

79 SBC Ex. 1.0 Pellerin at 23.
80 Id. at 24.
81 Id.
82 Id.
83 Id.
84 Id.
85 MCI Ex. 5.0 at 10.

A. No.

Q. Does Ms. Litchtenberg indicate what specific language proposed by SBC is unnecessary or ambiguous?

A. No. Ms. Litchtenberg does not point out what specific language proposed by SBC she considers to be unnecessary or ambiguous.

Q. Does Ms. Litchtenberg offer any rebuttal to SBC's contention that its proposed language is more appropriate because it provides the appropriate details?

A. No. Ms. Litchtenberg does not offer any rebuttal to SBC's contention.

Q. Do you agree with Ms. Litchtenberg that MCI's proposed language is straightforward or appropriate?

A. No. In my opinion, MCI's proposed language lacks necessary specifics.

Q. Do you find any of SBC's proposed language unnecessary or ambiguous?

A. No. I agree with Ms. Pellerin that SBC proposed language is more specific and provides appropriate details.

Staff Analysis and Recommendation

Q. What is your recommendation for RESALE 8?

A. I recommend that the Commission adopt SBC's proposed language. As I explain above, SBC's language is more specific and provides appropriate details. MCI's only criticism of SBC language is that it contains unnecessary or ambiguous language, but Ms Litchtenberg does not indicate which part of SBC language that she deems as unnecessary or ambiguous. Neither does Ms. Litchtenberg offer any

rebuttal to SBC's contention that its proposed language provides the appropriate details. Therefore, I recommend that the Commission adopt SBC proposed language for RESALE 8.

NIM 5

Statement of Issue:

Joint Which party's definition of Local Interconnection Trunk Group should be included in the Agreement?

SBC Position

Q. What is your understanding of SBC's position on this issue?

A. As I understand it, SBC takes the position that "Local Interconnection Trunk Group" should be defined as trunk groups that carry Section 251(b)(5) traffic, ISP bound traffic, and IntraLATA toll traffic by SBC or MCI on behalf of their respective end user customers.[86] In other words, SBC proposal would not allow IXC-carried IntraLATA toll and InterLATA traffic, or transit traffic from being carried over the same trunk groups.[87]

Q. How does SBC define "local traffic"?

A. SBC defines "local calls" as Section 251(b)(5) traffic – traffic that is subject to reciprocal compensation.[88]

[86] SBC Ex. 2.0 Albright at 20.
[87] Id. at 16, 20.
[88] Id. at 14.

Q. How does SBC define IntraLATA and InterLATA traffic?

A. IntraLATA toll is traffic between calling and called parties who are located in the same LATA but in different local calling areas, with local calling areas defined in *SBC Tariff Part 23 Section 2 Sheet 3*.[89]

An end user customer has, for the provision of IntraLATA toll services, the option of selecting his local service provider, or an IXC. When a call is carried by an IXC, the traffic is routed to the IXC for completion. The local service provider of the calling party and the called party are paid access charges (originating or terminating, respectively) for the use of their network in completing the call.

An InterLATA call is a call originating in one LATA and terminating in a different LATA (i.e., calling and called parties reside in different LATAs). The call is carried to the calling party's IXC, which then delivers it to the called party's local service provider in a different LATA.[90] In its proposed language, SBC refers to "IntraLATA traffic" as IntraLATA traffic that SBC or MCI carries on behalf of their respective end user customers.[91] "IntraLATA Access traffic" refers to IntraLATA traffic carried by an IXC (IXC-carried IntraLATA traffic). IXC-carried traffic refers to IXC-carried IntraLATA and InterLATA traffic.[92] .

MCI Position

Q. What is your understanding of MCI position?

[89] *NIM/ITR Appendix section 1.5*; *SBC Ex. 2.0 Albright at 14*.
[90] Id at 15.
[91] Id at 14-15.
[92] Id.

A. As I understand it, MCI takes the position that Local Interconnection Trunk Groups should be defined as trunk groups used by parties to "interconnect their network for the exchange of local, intraLATA toll, interLATA and transit traffic." [93]

Q. Did MCI file testimony to defend its position?

A. No. MCI does not provide supporting argument for its position in testimony.

Q. What are the essential differences between the MCI and SBC definitions of "Local Interconnection Trunk Groups"?

A. MCI's definition of Local Interconnection Trunk Group differs from SBC's definition in three respects: (1) the MCI definition does not distinguish section 251(b)(5) traffic from ISP traffic[94]; (2) the MCI definition allows IXC-carried IntraLATA traffic to be carried over Local Interconnection Trunk Groups; (3) the MCI definition allows InterLATA traffic, which is carried by IXC, to be carried over the Local Interconnection Trunk Groups; and (4) MCI definition includes transit traffic but SBC's does not.

Q. In your opinion, is the dispute between parties really a dispute in definition?

A. No. At its root, NIM 5 is not a dispute over definitions as the parties have framed it. In my opinion, the parties do not frame this issue properly. The essential dispute between MCI and SBC is whether to permit transit traffic and IXC-carried traffic to be carried over the same trunk groups as other traffic types.[95]

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[93] 8/10/04 DPL NIM5.

[94] I assume that MCI included ISP traffic in its "local traffic", "IntraLATA" or "InterLATA". Otherwise, MCI's definition would not include ISP traffic.

[95] NIM19a also deals with issue of whether to permit IXC-carried traffic being carried over the same trunk groups as other traffic types. *SBC Ex. 2.0 Albright at 13-18*, *19*.

Staff Analysis and Recommendation

Q. What is your recommendation?

A. I recommend the Commission separate issues related to the definition of "Local Interconnection Trunk Groups" from the real disputes between parties regarding the proper, efficient, and lawful use of those trunks. As explained above, the essential dispute under NIM 5 is not a matter of definition. Rather, it is whether to permit MCI to transit traffic and carry IXC traffic over the same trunk groups as other types of traffic. The parties appear to be in agreement that Section 251(b)(1), ISP-bound traffic, and IntraLATA toll (delivered by SBC or MCI on behalf of their end user customers) can be carried over the same interconnection trunk groups. Therefore, I recommend that the Commission separate the definitional disputes from the real disputes, and define Local Interconnection Trunk Groups (LITG) as trunk groups designated to exchange (between SBC and MCI) 251(b)(1) traffic, ISP-bound traffic, and IntraLATA toll traffic (delivered by SBC or MCI on behalf of their respective end users).

I will address issues related to whether the Commission should permit transit and IXC-carried traffic to be carried over the same trunk groups (i.e., Local Interconnection Trunk Groups) under NIM 31 and NIM 19a, respectively. In the event that the Commission decides to permit transit and IXC-carried traffic to be carried over the same trunk groups as the three above-listed traffic types, I recommend that the Commission adopt the same definition (for Local Interconnection Trunk Groups) as I recommend above, but instruct parties to incorporate into their Agreement language

stating that parties permit transit (or IXC-carried) traffic to be carried over Local Interconnection Trunk Groups.

NIM 19

Statement of Issue:

MCI: If MCI provides SBC Illinois with the jurisdictional factors required to rate traffic, should MCI be permitted to combine InterLATA traffic on the same trunk groups that carry Local and IntraLATA traffic?

SBC: What is the proper routing, treatment and compensation for interexchange traffic that terminates on a Party's circuit switch, including traffic routed or transported in whole or in part using Internet Protocol?

SBC Position

Q. What is your understanding of SBC position on NIM 19?

A. As I understand it, SBC takes the position that MCI should not be permitted to carry IXC-carried traffic (Intra/InterLATA) over the same trunk groups as Section *251(b)(1) traffic*, ISP-bound traffic and IntraLATA toll traffic (that is delivered by SBC or MCI on behalf of their respective end user customers). Rather, IXC-carried traffic should be carried over separate trunk groups.[96] .

Q. What arguments does SBC present to support its position?

A. Mr. Albright contends that "separate trunking is needed for the accurate tracking and billing of traffic exchanged between carriers."[97] Requiring a party to deliver IXC-carried traffic (InterLATA or IntraLATA) over separate trunk groups "ensures the

[96] *DPL NIM5*, *NIM19, SBC Ex. 2.0 Albright at 13-18, See also MCI Ex. 6.0 Price at 31-37.*

terminating party receives appropriate compensation."[98] This requirement is especially needed in view of "recent system gaming to avoid access appropriate access charged by the improper routing of IXC-carried InterLATA and IntraLATA traffic over local interconnection trunk groups".[99]

MCI Position

Q. What is your understanding of MCI's position on this issue?

A. As I understand it, MCI takes the position that it should be permitted to use one set of interconnection trunk groups to carry its interconnection traffic. More specifically, it should be permitted to carry *local*, IntraLATA, InterLATA and transit traffic over the same trunk groups.[100]

Q. What arguments does Mr. Price provide to support his position?

A. Mr. Price's primary argument in support of combined trunking (i.e., non-jurisdicitonal trunking) is that combined trunking is more efficient for MCI.[101]

Q. Does Mr. Price provide any evidence regarding the extent of the increase in efficiency to MCI from combined trunking?

A. No. Mr. Price does not provide any evidence for the Commission to assess the extent of the increase in efficiency to MCI if combined (non-jurisdictional) trunking is permitted. Intuitively, one would expect significant gains in efficiency to MCI from combined

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97 *SBC 2.0 Albright at 17*.
98 *DPL NIM 5* and *DPL NIM19a*.
99 Id.
100 8/10/04 *DPL NIM 5, NIM 19* and *MCI Ex. 6.0 Price at 32-33*.

trunking when the volume of IXC-carried traffic (or non-IXC-carried traffic) is so small as to be insufficient to justify a separate trunking group. If, however, both IXC-carried traffic volume and non-IXC-carried traffic volume are relatively large, it is unclear whether one might expect any gains in efficiency from combined trunking. Mr. Price neither provides any efficiency gain analysis from combined trunking, nor provides MCI's traffic volumes for IXC-carried and non-IXC-carried traffic. This information is presumably available to MCI. Consequently there is no evidence in this proceeding indicating whether there are any significant gains to MCI from combined trunking.

Q. Do you have comments on Mr. Price's efficiency argument?

A. Yes. I agree that in some circumstances combined (non-jurisdictional) trunking may be more efficient (or more cost efficient) than the use of separate trunking arrangements for a carrier. It, however, does not naturally follow that the Commission should require SBC to permit combined (or non-jurisdictional) trunking in such circumstances. As it often happens in network interconnection, an arrangement that is more efficient for a carrier may be less efficient for its interconnecting carrier or less efficient for the interconnected networks as a whole.

Q. Mr. Price also contends that if the Commission had implemented a unified intercarrier compensation regime, there would not be any need to measure jurisdictionally different traffic.[102] Do you have comments?

A. Yes. Mr. Price notes that the Commission, prior to the enactment of 1996 Telecommunication Act, found that there should be no difference in reciprocal

[101] MCI Ex. 6.0 at 32-33.
[102] MCI Ex. 6.0 Price at 34-35.

compensation and access rates.[103] While it might be true that segregation of traffic on a jurisdictional basis would lead to inefficiency, overturning the currently effective inter-carrier compensation regimes and developing an unified intercarrier compensation regime are certainly outside the scope of this arbitration proceeding.

Q. Does Mr. Price acknowledge that combined trunking would add additional complexity to SBC's billing?

A. Yes. Mr. Price acknowledges that combined (i.e., non-jurisdictional) trunking would add additional complexity to SBC's billing.[104]

Q. How does Mr. Price justify permitting combined trunking while acknowledging additional costs imposed on SBC's billing?

A. While acknowledging the additional complexity (or cost) to SBC's billing system, Mr. Price, nonetheless argues that combined trunking should be permitted. His reasoning is that the costs of that additional complexity should not outweigh the "significant countervailing benefits" of combined trunking to MCI (or others).[105]

Mr. Price, however, does not explain how he comes to this conclusion, or upon what evidence he bases it. As explained above, Mr. Price provides no evidence or analysis regarding the extent of gains in efficiency to MCI (or others) from permitting combined traffic, other than to assert that they exist. Likewise Mr. Price does not provide any evidence indicating the extent of the increase in costs to SBC's billing system. Therefore, Mr. Price does not substantiate his benefit-overweighing-cost claim.

103 Id.
104 *MCI Ex. 6.0 Price at 34.*
105 Id.

Q. Mr. Price, as support for his position, also stated that the additional complexity to SBC's billing is a solvable issue.[106] How does Mr. Price propose to solve the additional complexity problem?

A. After acknowledging that combined trunking would cause additional complexity to SBC's billing, Mr. Price asserts that this additional complexity problem is solvable.[107] Mr. Price explains that MCI has agreed to "provide SBC with jurisdictional use factors" or "actual measurements of jurisdictional traffic", and that MCI is willing to work with SBC, in good faith, to develop other possible procedures to address potential billing issues."[108]

Q. Does Mr. Price demonstrate that any of his proposed solutions are workable?

A. No. Mr. Price does not provide any evidence to indicate how well or how poorly his proposed solutions are likely to perform in producing accurate measurements of jurisdictional traffic. Further, he does not demonstrate that his proposed methods are likely to produce accurate measurements of jurisdictional traffic. Instead, he explains that MCI "is willing to work with SBC, in good faith, to develop other possible procedures to address potential billing issues."[109] This suggests that Mr. Price is not in a position to accurately assess how well (or how poorly) his proposal is likely to work in producing measurements of jurisdictional traffic for billing purposes. Certainly, the Commission cannot assume a solution is workable simply because MCI promises to make good-faith effort to develop procedures to address potential problems. Therefore, it is reasonable and logical to conclude that MCI has not presented any workable

106 *MCI Ex. 6.0 Price at 35-36.*
107 Id.
108 Id.

solution for the extra complexity caused by combined trunking.

I also note that Mr. Price, while contending that MCI "is willing to work with SBC, in good faith, to develop other possible procedures to address potential billing issues", is silent on the financial responsible for developing "possible procedures to address potential billing issues".[110] Specifically, Mr. Price does not address financial responsibility for any costs incurred in developing the "procedures" or necessary modification to SBC billing.

Q. Has Mr. Price's "factor" approach for the measurement of jurisdictional traffic been brought to the Commission in past arbitration proceeding?

A. Yes. AT&T, in its recent arbitration proceeding, proposed to use "factor" approach to produce measurements of jurisdictional traffic.[111] The Commission, however, did not adopt AT&T's proposal.[112]

Like MCI in this proceeding, AT&T did not dispute that combined (or non-jurisdictional) trunking would necessitate modifications to SBC's existing billing systems, nor did AT&T address the necessary modifications or volunteer to pay for these modifications.[113]

In its Order in the AT&T arbitration proceeding, the Commission adopted SBC's proposal, requiring separate (or jurisdictional) trunking for IXC-carried traffic.[114]

Q. Has the Commission addressed the issue of requiring separate trunking groups for Inter-LATA traffic in any other arbitration proceedings?

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109 Id.
110 Id.
111 *Order ICC Docket No. 03-0239 at 151-154.*
112 Id.
113 Id.
114 Id.

A. Yes. The Commission has, in past arbitration decisions (prior to the AT&T arbitration), required that jurisdictional (i.e., separate) trunks be used. Specifically, the Commission found that it was not possible to "obtain accurate measurements [of different jurisdictional traffic] over combined trunk groups" without "extensive modifications" to both systems billing for reciprocal compensation" and systems for billing for IXC access charge.[115] Thus the Commission required that separate trunking groups be used to "carry InterLATA toll-switched traffic".[116]

Q. Do you have other comments regarding MCI position on this issue?

A. Yes. MCI's position on this issue appears to be inconsistent with language agreed upon by MCI and SBC in sections 9.1 and 9.2 (Meet Point Trunking Agreements") of the NIM/ITR Appendix.[117] Under Meet Point Trunking Agreements, MCI has agreed to jurisdictional (i.e., separate) trunking arrangements. This appears to be inconsistent with MCI language under NIM 19 (Section 7.1.1 and 7.1.1.1 of NIM/ITR Appendix). By agreeing to jurisdictional trunking under the Meet Point Trunking Arrangement, MCI appears to acknowledge its proposed "solutions" (for measuring jurisdictional traffic) cannot perform well in producing accurate measurements of jurisdictional traffic.

Staff Analysis and Recommendation

Q. What is your recommendation for NIM 19?

115 *Sprint Arbitration 96-AB-008 at 6.*
116 *MCI Arbitration 96-AB-006 at 14-15.*
117 *NIM/ITR Appendix at* and *SBC Ex. 2.0 Albright at 16.*

A. I recommend that the Commission adopt SBC's proposal requiring jurisdictional (i.e., separate) trunking. More specifically, I recommend that the Commission decide this issue in a manner consistent with its AT&T/SBC Arbitration Decision and require IXC-carried traffic (IntraLATA or InterLATA) to be carried on a different set of trunk groups, not on the "Local Interconnection Trunk Groups" as defined in Staff recommendations under NIM 5 above. As explained above, Mr. Price, while asserting that the benefits in combined trunking would outweigh the costs associated with the extra complexity in SBC's billing, simply does not provide any supporting evidence to substantiate his claim. In fact, MCI does not provide any evidence indicating the extent of MCI's gains in efficiency from combined trunking. Neither does MCI provide any evidence indicating the extent of the costs required to modify SBC's billing system to accommodate combined trunking. In addition, MCI is silent on the financial responsibility for developing the necessary procedures (or modifications to SBC's existing billing systems). Further, MCI simply does not propose any workable solutions for the "extra complexity" caused by combined trunking. MCI's promise to make a good-faith effort to work with SBC in developing procedures to deal with potential problems in billing issues is not equivalent to proposing a procedure that is likely to perform well in producing accurate measurements of jurisdictional traffic. All in all, MCI simply does not present evidence that warrants a Commission decision that departs from the AT&T Arbitration Decision. Therefore, I recommend that the Commission decide this issue in a manner consistent with its AT&T Arbitration Decision.

NIM 9

Statement of Issue:

Joint **Which party's definition of points of interconnection should be included in the Agreement?**

SBC Position

Q. What is you understanding of SBC position?

A. As I understand it, SBC takes the position that a point of interconnection should be defined as:

> [A] point in the network where the parties deliver interconnection traffic to each other, and also serve as a demarcation point between the facilities that each party is responsible for providing. In many cases, multiple POIs are necessary to balance the facilities investment and provide the best technical implementation of interconnection requirements to each tandem within a LATA. Both parties shall negotiate the architecture in each location that will seek to mutually minimize and equalize investment.[118]

MCI Position

Q. What is MCI's position?

A. MCI takes the position that a Point Of Interconnection should be defined as:

> A POI is a physical location at which the parties network meets for purpose of establishing interconnection. POIs include a number of different technologies and technical interfaces based on parties' mutual agreement.[119]

[118] *8/10/04 DPL NIM 9.*
[119] 8/10/04 DPL NIM 9.

Staff Analysis and Recommendation

Q. What is your recommendation?

A. As the phrase implies, a point of interconnection (POI) is a physical point where parties' networks meet and where parties' deliver traffic to each other. The Commission has determined that each party is responsible for facilities on its side of the POI.[120] I see no reason why the Commission should depart from this decision. In my opinion, the remaining SBC language should not be part of a definition. It simply states that in some cases multiple POIs are necessary. Similarly, it is my opinion that the requirement that "POIs include a number of different technologies and technical interfaces based on parties' mutual agreement" in MCI's proposed language should not be part of the Commission approved definition. Therefore, I recommend that the following definition of POI be incorporated into parties' Agreement:

> A Point of Interconnection (POI) is a physical point on an incumbent LEC's network where the incumbent LEC and the competing carrier's networks meet and where traffic is delivered to each other.

I also recommend that the Commission require parties to incorporate the following language (which the Commission ordered in AT&T/SBC Arbitration) into their Agreement:

> Each party remains responsible for the facilities on its side of the POI.

NIM 14

Statement of Issue:

[120] *Order 03-0239 at 22.*

MCI **Should the Agreement include language reflecting the well-established legal principle that MCI is entitled to interconnect at a single POI per LATA?**

SBC **a) Where should MCI interconnect with MCI?**
b) Should MCI be required to bear the costs of selecting a technically feasible but expensive form of interconnection such as a single POI or POIs outside the Tandem Serving Area?

SBC Position

Q. What your understanding of SBC position on NIM 14(a) and (b)?

A. As I understand it, SBC takes the position that a requesting carrier, in general, may elect a single POI or a multiple POI interconnection arrangement.[121] However, SBC appears to have concluded that, as between SBC and MCI specifically, multiple POIs are necessary under certain circumstances.[122] SBC contends that, were MCI permitted to elect a single-POI arrangement, network reliability might be adversely affected.[123] Unless MCI establishes POI(s) in each tandem serving area (TSA), MCI should be partially responsible for the costs of transporting calls originated by SBC end users to the POI(s).[124]

Q. Do you have comments on SBC's position?

A. Yes. I agree with SBC that different interconnection arrangements (e.g., SPOI or multiple POIs) would impose different costs of transporting calls originated by SBC end users to MCI's POI(s). The more POIs MCI elects, the fewer tandems and shorter distance traffic (originated on SBC's network) must travel before being handed over to

121 SBC Ex. 2.0 at 23-24.
122 Id. at 24.
123 Id.
124 SBC Ex. 2.0 at 23-24.

MCI (i.e., reaching the POIs). The FCC is keenly aware of this, noting that the interconnecting carrier's right under Section 251(c)(2) "has led to questions concerning which carrier should bear the cost of transport to the POI".[125] In particular, it has raised questions whether an ILEC should be obligated to interconnect at the SPOI (as elected by the requesting carrier) and bear its costs of transporting calls to the SPOI is located outside the local calling area.[126] Alternatively, it has raised questions whether a carrier should be required either to interconnect at every local calling area, or to pay the ILEC transport and/access charges if the location of the single POI requires the ILEC to transport a call outside the local calling area".[127]

I note, however, that MCI may, under *currently* effective federal and state law, elect to interconnect with SBC at any technically feasible point on SBC's network, and that SBC may not charge MCI for the transport of traffic originated on SBC network to the POI(s).

MCI Position

Q. What is MCI's position on this issue?

A. MCI takes the position that it is entitled, under both Section 251(c)(2) of the federal Act and Section 13-801 of the PUA,[128] to interconnect with SBC's network at any

125 *FCC 01-132 at 112-113.*
126 *FCC 01-132 at 112-113.*
127 *FCC 01-132 at 112-113.*
128 220 ILCS 5/13-801

technically feasible point within a LATA. In particular, it may elect a Single Point of Interconnection (SPOI) and SBC "purports not to dispute MCI's right."[129]

Moreover, MCI takes the position that MCI may, *at its own discretion*, elect to discontinue maintaining the multiple POI interconnection arrangements that MCI has elected to establish in a LATA "in exchange for SBC's agreement to certain reciprocal compensation terms and conditions" and decide to change to SPOI interconnection agreement.[130]

Q. Do you have comments on MCI's position?

A. Yes. Mr. Ricca draws supports for MCI's position from federal and state laws, in particular from Section 251(c)(2) of the federal Act and Section 13-801 of the PUA. Mr. Ricca, however, omits an important point. Section 251(c)(2) also requires that the point of interconnection be on the incumbent LEC's (*i.e.*, SBC's in this case) network. In other words, MCI may not, under either federal or state laws, elect a technically feasible Point of Interconnection (POI) that is *not* on SBC's network.

Q. Do you agree with Mr. Ricca that SBC may not charge MCI for transporting calls originated on SBC's network to the POI, even if MCI elected SPOI?

A. Yes. I agree with Mr. Ricca that under currently effective federal and state laws, SBC may not charge MCI for transporting calls that originate on SBC's network to the POI with MCI.[131] . Moreover, the Commission, in the AT&T/SBC arbitration found that each carrier (or party) should be responsible (including financially) for providing all of

129 *MCI Ex. 7.0 Ricca at 30.*
130 *8/10/04 DPL NIM 14*, and *NIM/ITR Appendix Section 3.3*.
131 See for example, FCC 01-132 ¶112.

the facilities and engineering on its respective side of each Point of Interconnection (POI).[132] That is, each carrier should bear the financial responsibility of delivering its originating traffic to the POI.

Q. How does SBC respond to MCI's position that it may, at its own discretion, dismantle the established multiple POIs and/or resort to a SPOI interconnection arrangement?

A. Mr. Albright contends that MCI should not be allowed, at its own discretion, to dismantle any established POI(s). MCI has, according to Mr. Albright, established POIs at each SBC tandem switch in the Chicago LATA.[133] Mr. Albright asserts that "parties" (presumably MCI and SBC, although Mr. Albright does not specify this) have "invested time and expense to interconnect their network at multiple points [at each tandem] within the Chicago LATA."[134] He further argues that multiple-point interconnection arrangement is more efficient and reduces network risks.[135] In Mr. Albright's opinion, it is simply not good network engineering to dismantle an efficient network interconnection arrangement (i.e., multiple POIs) and to resort to a less efficient network interconnection arrangement (i.e., SPOI), especially after "parties have invested time and expense" to establish the multiple-point interconnection arrangements.[136]

Q. Is the position that MCI should not be permitted to dismantle existing multiple-point interconnection arrangement (at its own discretion) inconsistent with MCI's rights under section 251(c)(2)?

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132 Order ICC No. 03-0239 at 28.
133 SBC Ex. 2.0 at 25.
134 *SBC Ex. 2.0 Albright at 24-25.*
135 Id. at 26-27.
136 *Id at 25-26.*

A. No, not to my understanding. Section 251(c)(2) affords MCI the right to interconnect (or establish interconnection) at any technically feasible point on SBC's network in a LATA. However, I do not believe that right permits MCI to establish and then dismantle interconnection arrangements at will, particularly if such actions impose unnecessary costs on SBC or affect SBC's network reliability. Taken to the extreme, a carrier could endlessly reconfigure its network, simply to impose cost burdens on SBC.

Certainly, as a matter of policy there is reason to afford carriers that have different network architectures certain protections. For example, SBC should not be able to leverage its market position to force CLECs to bear all costs of interconnection or to penalize CLECs that elect different network architectures. For these reasons, offering CLECs single POI options are reasonable mechanisms to protect against abuses that SBC's market position potentially permits. Nevertheless, the Commission should not permit CLECs to take advantage of these protection mechanisms and use them to turn the tables on SBC – in effect forcing SBC to bear potentially frivolous costs for interconnection.

It is unclear why MCI would seek to dismantle its existing interconnection arrangement. On its face this would seem to be inefficient as SBC (as well as MCI) has "invested time and expense" to establish the (multiple-point) interconnection arrangement. Therefore, as a matter of policy, I recommend that, unless MCI provides a reasonable explanation for its proposal, that the Commission reject it.

Staff Analysis and Recommendation

Q. What is your recommendation?

A. I recommend that the Commission not depart from its position in AT&T/SBC Arbitration Decision (ICC Docket No. 03-239). While SBC's concerns are understandable, currently effective federal law not only allow MCI to interconnect at any technically feasible point on SBC network but also preclude SBC from charging MCI for transporting calls originating on SBC network to the POI(s).

However, I do not recommend that the Commission permit MCI, at its own discretion, to dismantle the established multiple-point interconnection arrangement with SBC. As explained above, SBC (as well as MCI) has "invested time and expense" to establish the (multiple-point) interconnection arrangement. Affording a CLEC the right to dismantle an established efficient interconnection arrangement at its own discretion is, absent any identifiable justification, bad policy.

NIM 16

Statement of Issue:

Joint When is mutual agreement necessary for establishing the requested method of interconnection?

SBC Position

Q. What is SBC's position on NIM 16?

A. As I understand it, SBC takes the position that Fiber Meet Point interconnection arrangements should be mutually agreed upon, not dictated by MCI.

Q. How many Fiber Meet Point designs did SBC propose?

A. SBC proposed two Fiber Meet Point designs: (1) each party provides two fibers between MCI and SBC locations, and (2) MCI provides fiber to the last entrance manhole.[137] Under the first Fiber Meet Point design, SBC proposes to add limiting language stating that such an arrangement may only be considered where existing fiber is available and there is mutual beneficial to both parties.[138]

MCI Position

Q. What is MCI's position?

A. As I understand it, MCI takes the position that it may interconnect at any technically feasible point using Fiber Meet Point interconnection arrangement (or any technically feasible methods) at one or more location at each LATA:

> SBC Illinois shall provide interconnection at any technically feasible point, by any technically feasible means, including but not limited to, a fiber meet at one or more locations in each LATA in which MCIm originates local, IntraLATA toll, or meet point switched access traffic and interconnects with SBC Illinois.[139]

MCI objects to SBC language stating Fiber Meet Point interconnection "can occur at any mutually agreeable and technically feasible point."[140] It also objects to SBC's proposal of two Fiber Meet Point designs, stating that this "seems to permit SBC to veto MCI's preferred option."[141] Moreover, MCI objects to SBC's limiting language,

137 SBC Ex. 2.0 at 20-21.
138 Id. at 22-23.
139 NIM/ITR Appendix section 4.4.1.
140 *MCI Ex. 6.0 Price at 40*.
141 Id.

stating that its Fiber Meet Point design will only be considered where existing fiber is available and there is a " 'mutual benefit' to both parties."[142]

Q. What Fiber Meet Point design does MCI propose?

A. MCI only proposes one Fiber Meet Point design – the first of the two Fiber Meet Point designs proposed by SBC.[143] Under this Fiber Meet Point interconnection arrangement, MCI and SBC will provide fiber facilities between SBC Wire Center and MCI Wire Center, where each party shall, at its own expense, procure, install, and maintain the specified Fiber Optic Terminal in its own respective Wire Centers.[144]

Q. Please commenting on MCI's objection to having two Fiber Meet Point designs in the parties' Agreement?

A. According to Mr. Price, the availability of two options "seems to permit SBC to veto MCI's preferred option."[145] This appears that MCI takes the position that any *fiber meet point* design implemented or established between MCI and SBC must be MCI's preferred option – i.e., MCI not only may dictate at what location(s) to interconnect using *the particular type of Fiber Meet Point design*, but it may also exclude from parties' Agreement fiber meet point designs that are less preferable to MCI.

Q. Please comments on MCI's objection to SBC liming language proposed Fiber Meet Point interconnection arrangement.

A. MCI also objects to SBC's limiting language stating that its Fiber Meet Point design will only be considered where existing fiber is available and there is a "mutual

142 Id.
143 Id. at 41-43.
144 *NIM/ITR Appendix 4.4.4.1, 4.4.4.2 and 4.4.4.3.1.*

benefit."[146] Judging from Mr. Price's objection to the limiting language, he appears to take the position that SBC may not refuse to establish a *fiber meet point* interconnection arrangement with MCI *even where no existing fiber is available.* Likewise, SBC cannot refuse to interconnect with MCI using this particular form of Fiber Meet Point arrangement where MCI (not SBC) is the only party that benefits from such a *specific Fiber Meet Point* interconnection arrangement. Similarly, even in situations in which MCI is the sole party of the two that benefits from such specific form of Fiber Meet Point, and in which no existing fiber available (at a MCI selected location), SBC still may not refuse MCI the right to interconnect with SBC using the Fiber Meet Point arrangement — i.e., SBC must, at the request of MCI, build or deploy fiber facilities solely for the benefits of MCI.

Q. What support did MCI provide for its position?

A. It appears that MCI takes the position that it has, under the Act, the right to interconnect at any technically feasible point(s) and using any technically feasible methods. Therefore, it is entitled to interconnect using the particular type of Fiber Meet Point arrangement at any location(s) in a LATA.[147]

Q. Do you agree that MCI is entitled, under the Act, to interconnect with SBC at (1) *one or more location(s) in each LATA* (2) *using the particular Fiber Meet Point arrangement*?

A. No. Mr. Price appears to have misread Section 251(c)(2) of the Act. Section 251(c)(2) reads,

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145 MCI Ex. 6.0 at 40.
146 Id.
147 Id. at 40-41.

> … … each incumbent local exchange carrier has ……[t]he duty to provide, for the facilities and equipment of any telecommunications carrier, interconnection with local exchange carrier's network –
> … …
> (B) at any technically feasible point within the [ILEC] carrier's network."
> … …

First, it should be noted that MCI is only entitled to, under Section 251(c)(2), to interconnect with SBC at any technically feasible point on (or within) SBC's network in each LATA. Of course, not all locations in a LATA are on (or within) SBC's network. Therefore, SBC is not required, under Section 251(c)(2), to interconnect with MCI at "*one or more location at each the LATA*" where the location or locations are not on (or within) SBC's network. As a result, MCI proposed language in 4.4.1 of the NIM/ITR has gone beyond the duty imposed on SBC under Section 251(c)(2).

Second, Section 251(c)(2) imposes on SBC the duty to *provide interconnection* for the facilities and equipment of any telecommunications carrier. The only facilities mentioned in Section 251(c)(2) are the facilities (and equipment) of the telecommunications carrier that is requesting interconnection. In other words, Section 251(c)(2) does not impose on SBC the duty to provide *interconnection facilities.* Alternatively, MCI may not, under Section 251(c)(2), request that SBC provide *interconnection facilities* for the purpose of establishing interconnection with SBC's network.

Third, there are many fiber meet point interconnection arrangements.[148] MCI's language includes only one particular fiber meet point design – MCI's preferred design. Under MCI's Fiber Meet Point design[149], SBC is to provide fiber facilities between SBC and MCI locations (Wire Centers). SBC also must, "wholly at its own expense, procure, install, and maintain the specified Fiber Optic Terminal in each SBC Illinois Wire Center where the parties establish a Fiber Meet."[150] The fiber facilities under MCI's Fiber Meet Point arrangement are facilities connecting SBC and MCI's networks, i.e., interconnection facilities. Therefore, MCI's Fiber Meet Point interconnection arrangement not only requires that SBC provide *interconnection* but it also imposes on SBC the duty to provide "*interconnection facilities*'.[151] Accordingly, MCI's Fiber Meet Point arrangement goes beyond the duty imposed on SBC under Section 251(c)(2).

In summary, MCI is not entitled, under Section 251(c)(2), to this particular form of Fiber Meet interconnection arrangement (MCI's preferred fiber meet point design). This is because this Fiber Meet Point design goes beyond the requirement of Section 251(c)(2). Similarly, MCI is not entitled, under Section 251(c)(2), to establish interconnection with SBC at "one or more locations in each LATA" where the one or more locations are not on (or within) SBC's network. This is because MCI is only entitled to interconnect with SBC at any technically feasible point on (or within) SBC's

[148] Meet point arrangements such as Mid-span meets are commonly used by neighboring LECs for the mutual exchange of traffic.

[149] MCI's preferred design which is one of the two fiber meet point designs proposed by SBC for the inclusion in the Agreement.

[150] *See NIM/ITR Appendix 4.4.4.1 & 4.4.4.3.1.*MCI must do so as well. *See NIM/ITR Appendix 4.4.4.2 & 4.4.4.3.1*.

network in each LATA. Therefore, MCI is not entitled, under Section 251(c)(2) of the Act, to interconnect with SBC at one or more locations in each LATA using MCI's preferred Fiber Meet Point interconnection arrangement as described in *NIM/ITR Appendix 4.4.4.3.1*.

Q. Do you have any additional comments regarding interconnection facilities?

A. Yes. In the *Triennial Review Order*, the FCC removed entrance facilities (or interconnection trunks) from the definition of "dedicated transport" facilities. It relieved incumbent LECs (ILECs) of the unbundling obligations under Section 251(c)(3). That is, incumbent LECs (including SBC) are no longer required to provide interconnection (or entrance) facilities on an unbundled basis at TELRIC-based prices.[152] As noted above, MCI objects to SBC's limiting language in 4.4.4.3.1:

> "This [MCI's preferred] design may only be considered where existing fibers are available and there is a mutual benefit.[153]

Thus MCI appears to believe that SBC may not refuse to interconnect with MCI using its preferred Fiber Meet Point design *even in situations in which there is not a mutual benefit* – i.e., where MCI is the sole benefiting party between MCI and SBC. This would require that SBC provide interconnection (or entrance) facilities to MCI at no cost. This is in sharp contract with the FCC decision in the *TRO*, which relieved the ILECs of their obligations to provide interconnection (entrance) facilities at TELRIC-based prices.

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[151] Note that the FCC explicitly made distinction between "interconnection" and "interconnection facilities." See, the Local Competition Order, ¶176.

[152] Note that USTA II did not overturn FCC's rules on entrance facilities.

Q. Do you have any additional comments regarding Mr. Price's supporting arguments for MCI's position and language?

A. Yes. It appears that Mr. Price bases his claim that MCI is entitled to interconnect using its preferred Fiber Meet Point arrangement, in part, on paragraph 553 of the *the Local Competition Order*[154] Mr. Price is correct that the FCC did, in the Local Competition *Order*, allow the use of fiber meet arrangements for purposes of interconnection under Section 251(c)(2), assuming "limited build-out of facilities" required of the incumbent LECs.[155] Mr. Price's use of the FCC discussion as support of MCI position is inappropriate for the following reasons.

First, the fiber meet arrangements discussed by the FCC are mid-span fiber meets. In a mid-span fiber meet arrangement, each party is financially responsible for the costs of build-out of facilities to the *meet point*, which is somewhere between the parties' respective networks. It is obvious that some of the mid-span fiber meet arrangements would only require "*limited build-out of facilities" on the part of the incumbent LEC.* This is the case, for example, when the meet point is located near the incumbent LEC. The required build-out of fiber facilities under MCI's preferred Fiber Meet Point is, however, completely different. It requires SBC (the incumbent LEC) to provide fiber facilities to connect the two parties, not just to some meet point between the parties. In this case, the build-out of facilities required of SBC is not "limited' except where MCI wire centers are located a short distance away from SBC wire centers.

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153 NIM/ITR Appendix 4.4.4.3.1.
154 FCC 96-325, Rel. August 8, 1996.

Second, Mr. Price acknowledges that, under MCI's Fiber Meet Point proposal, SBC would be required to provide fiber facilities connecting SBC and MCI wire centers or locations – i.e., providing *interconnection facilities*.[156] Mr. Price somehow assertss that providing interconnection facilities constitutes "*limited building-out* of facilities".[157] The "limited build-out of facilities" referred by the FCC is, like cross-connect, an "accommodation of interconnection", not interconnection facilities.[158] The fiber facilities to be provided by SBC under MCI preferred Fiber Meet Point are interconnection facilities — i.e., facilities connecting SBC and MCI wire center or networks — not merely an accommodation of interconnection. The FCC has made abundantly clear the distinction between accommodation of interconnection and interconnection facilities.[159]

Staff Analysis and Recommendation

Q. What are your recommendations?

A. I recommend that the Commission reject MCI's proposed language as it relates to Fiber Meet Point arrangement. MCI proposed language goes beyond the requirements imposed under Section 251(c)(2). First, as explained above, MCI proposed language does not limit MCI's rights to interconnect with SBC to technically feasible points <u>within SBC network</u>. Rather, it may allow MCI to interconnect with SBC at a (technically feasible) point that is not on SBC's network. Second, MCI's proposed

155 *MCI Ex. 6.0 Price at 39*.
156 Id.
157 Id.
158 *Local Competition Order, ¶553*.

Fiber Meet Point interconnection arrangement not only requires that SBC provide interconnection (as required under Section 251(c)(2)), but *it also requires SBC to provide interconnection facilities*, which clearly is beyond the scope of Section 251(c)(2). Therefore, MCI's Fiber Meet Point interconnection agreement does not fall under Section 251(c)(2). Accordingly, MCI's rights under Section 251(c)(2) do not apply to its proposed Fiber Meet Point (as described in NIM Appendix 4.4.4.3.1). Consequently, MCI is not entitled to interconnect with SBC using the Fiber Meet Point interconnection arrangement. I, therefore, recommend that the Commission adopt SBC's language regarding Fiber Meet Interconnection.

NIM 18

Statement of Issue:

MCI **Should SBC be permitted to limit methods of interconnection?**

SBC **a) Should MCI be required to interconnect on SBC's network?**

b) Should the Fiber Meet Design option selected be mutually agreeable to both parities?

Staff Analysis and Recommendation

Q. Are these the disputes covered in NIM 16?

A. Yes. These issues are all related to Fiber Meet Point Interconnection arrangement. My recommendations for NIM 18 are thus the same as those for NIM 16.

[159] See, *Local Competition Order*, ¶176.

NIM 15

Statement of Issue:

MCI Should MCI be permitted to elect LATA wide terminating interconnection?

SBC Should MCI be required to trunk to every tandem in the LATA?

SBC Position

Q. Please describe your understanding of SBC's position.

A. As I understand it, SBC takes the position that MCI should be required to establish interconnection trunks to each tandem in the LATA. More specifically, Mr. Albright states that: "MCI should first establish its Points of Interconnection ("POIs") with SBC in the LATA. MCI then should establish trunk groups that directly connect to each SBC tandem in the LATA."[160]

Q. Does SBC acknowledge that MCI is entitled to a single POI at a technically feasible point on SBC's network?

A. Yes. Mr. Albright acknowledged MCI's rights to a single POI.[161]

Q. What are SBC's principal arguments in support of its direct trunking requirement?

A. The principal arguments presented by SBC are efficient utilization of tandem resources and tandem exhaustion.[162]

Q. Did Mr. Albirght explain tandem exhaustion in Illinois?

A. Yes. Mr. Albright explained that Chicago LATA was adequately served by three

[160] *SBC Ex. 2.0 Albright at 4.*

tandems before 1996.[163] The number of tandems has increased to fourteen since then. By next year the three original tandems would be exhausted, and without relief, additional tandems will be exhausted in the next few years.[164]

Q. Please explain why single POI interconnection arrangement would increase the utilization of tandem utilization and thus contribute to tandem exhaustion.

A. Under Single Point Interconnection (SPOI), inter-network traffic often traverses through more tandems and a greater distance than intra-network traffic and than inter-network traffic associated with multiple-POI interconnection arrangement. This is because all traffic originating from SBC end users and destined for MCI end users will have to be routed through tandem(s) to the single point of interconnection. For example, traffic between two neighboring end users will only need to traverse through the serving end office, if both are SBC subscribers. However, if one end user is SBC subscriber and the other is MCI subscriber, traffic between the same two end users will have to traverse through at least one SBC tandem and travel a greater distance, regardless of where the end users are located. Generally speaking, under a SPOI arrangement, inter-network traffic between any two given end users often must traverse through more tandems and a greater distance than under multiple POIs or intra-network traffic. For that reason, more tandem resources are required under SPOI arrangements than multiple POIs interconnection arrangements.

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161 *Id. at 23.*
162 Id. at 23-27.
163 *Id. at 12.*
164 Id. at 12.

MCI Position

Q. Please describe your understanding of MCI position for NIM 15.

A. Mr. Ricca does not address NIM Issue 15 in direct testimony. In his rebuttal testimony, Mr. Ricca appears to suggest that MCI's position is misread and that MCI is not proposing to terminate all its traffic in a multi-tandem LATA through a single tandem switch.[165] However, it is not entirely clear whether MR. Ricca actually refers to NIM15.

As explained earlier in this testimony, Mr. Ricca, under NIM 14, takes the position that MCI is entitled under the federal and state laws, to interconnect with SBC at "any technically feasible point within a LATA.[166] It may elect a single point of interconnection ("SPOI") and "SBC "purports" not to dispute MCI's right to do so."[167]

Q. Do you agree that both Section 251(c)(3) of the federal Act and Section 13-801 of the PUA give MCI the right to interconnect with SBC at any technically feasible point within SBC's network in a LATA?

A. Yes.

Q. Does this mean that SBC's direct-trunking requirement is necessarily in violation of federal and state law?

A. No. As the Commission found in its Verizon/SBC Arbitration Decision, tandem exhaust is a significant problem in Illinois.[168] The Commission, after reviewing evidence, made its determination that it is necessary to grant SBC tandem relief.[169]

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165 MCI Ex.11.0 Ricca at 26-27.
166 MCI Ex. 7.0 Ricca at 30.
167 MCI Ex. 7.0 Ricca at 30.
168 *Order ICC 01-0007* (*May 21, 2001*) at *6-8*.
169 Id.

The Commission adopted Staff witness Russell Murray's proposal: taking traffic off the tandem as soon as traffic to an end office reaches a trigger level of DS-1 capacity during peak-usage hours for three consecutive months.[170] The Commission notes that direct trunking, however, may not be appropriate solution in all situations. Alternatives (o direct trunking) are available such as meet points and Digital Cross Connects. Mr. Murray's proposal allowed parties to address tandem exhaust without requiring Verizon to establish direct trunking.[171]

With respect to direct trunking and a carrier's right to an SPOI arrangement under Section 251(c)(2), the Commission concluded,

> Verizon retains its right to interconnect at any technically feasible point of its choosing, which the tandem is not, once the traffic reaches a certain level. Any alternative connection, however, should not involve routing traffic through the tandem once the trigger point has been reached.[172]

Therefore, the Commission reached the conclusion that direct trunking requirement *per se* is not necessarily inconsistent with a carrier's rights under Section 251(c)(2).

In addition, as explained by Staff Engineer Russ Murray, SPOI arrangement may coexist with direct trunking to various end office and/or tandem offices.[173]

Q. In your opinion, is SBC's requirement of direct trunking to every tandem office in the LATA reasonable?

A. Not necessarily. For example, if traffic between MCI and a SBC tandem is very low in volume, it is certainly unreasonable to require MCI to direct trunking to this tandem.

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170 Id.
171 Id.
172 Id. at 8.
173 Staff Ex. 7.0 Murray at 5-8.

However, if the volume of traffic exchanged between a SBC tandem and MCI is sufficiently large, it may be reasonable to require MCI to direct trunking to such tandem. As the Commission reasoned in Verizon Arbitration, this requirement does not deny MCI the rights to interconnect at any technically feasible point of its choosing, which is not the POI tandem, once traffic between MCI and a tandem reaches certain level.[174]

Staff Analysis and Recommendation

Q. What are staff's recommendations regarding SBC proposed direct trunking requirement?

A. Staff agrees that tandem exhaust is a significant (or serious) problem in Illinios. In my opinion both SBC and MCI's positions are extreme: SBC requires direct trunking to each tandem, and MCI claims its rights to SPOI. I recommend that the Commission adopt a middle-ground approach, consistent with its past rulings on direct trunking. That is, I recommend that the Commission require direct trunking to a SBC tandem if traffic between MCI and this tandem exceeds a certain threshold level for a period of time. Staff Engineer Russ Muray recommends that this threshold traffic level should be set at DS-1 and the period of time should be set at consecutive three months.[175] Therefore, staff's recommendation is that once traffic between MCI and a SBC tandem exceeds DS-1 during busy hours for three consecutive months, direct trunking to this SBC tandem is required.

[174] Order ICC Docket No. 01-0007 at 8.
[175] Staff Ex. 7.0 Murray at 11-12.

NIM 11/12

Statement of Issue:

Joint **Should SBC's definitions of 251(b)(5) traffic and 251(b)(5)/IntraLATA traffic be included in the Appendix NIM of the Agreement?**

SBC Position

Q. Please describe your understanding of SBC's position?

A. As I understand it, SBC takes the position that it is important to define each jurisdictional type of traffic: 251(b)(5), ISP-bounded, IntraLATA and InterLATA and transit. SBC argues that it is important to define each type of traffic in order to accurately route and compensate such traffic.[176]

MCI Position

Q. What is MCI's position on NIM 11/12?

A. MCI takes the position that the definition of 251(b)(5) traffic should be omitted from NIM Appendix.[177] MCI further argues that 251(b)(5)/IntraLATA should be omitted as well because "it is inconsistent with commission rulings that carriers should be permitted to include InterLATA traffic on the same trunk groups which carry local and intraLATA traffic."[178]

Q. Do you have any comments on MCI's position?

A. Yes. I have two comments. First, I do not know what commission rulings MCI refers

[176] *8/10/04 DPL NIM 11 NIM 12. SBC Ex. 2.0 McPhee at 60-61.*
[177] *8/10/04 DPL NIM 12.*
[178] Id.

to that permit InterLATA traffic being carried over the same trunk group as other types of traffic. In its AT&T/SBC Arbitration Decision, the Commission rejected AT&T's proposal of permitting combined (non-jurisdictional) trunking.[179] Even if InterLATA traffic is being carried over the same trunk group, it does not follow that traffic classification is redundant. Different jurisdictional traffic is subject to different rules and regulations and different intercarrier compensation regimes. It certainly adds clarity and avoids confusion.

Staff Analysis and Recommendation

Q. What is your recommendation?

A. I recommend that the Commission permit the use of the terms of "251(b)(5) traffic" and "251(b)(5)/IntraLATA traffic." The use of these terms is consistent with the FCC characterization of traffic. I note that the FCC has abandoned its official definition of "local traffic", citing unnecessary ambiguities created by the term "local traffic". [180] Instead, the FCC refers to traffic that is subject to reciprocal compensation under Section 251(b)(5) as 251(b)(5) traffic. The use of "251(b)(5)" is consistent with the FCC's classification of jurisdictional traffic: "251(b)(5)," "ISP-bound," "IntraLATA" and "InterLATA." Therefore, I recommend that the Commission adopt SBC's jurisdictional classification of traffic.

[179] Order ICC Docket No. 03-0239 at 151-154.
[180] See ISP Remand Order (FCC 01-131).

NIM 17

Statement of Issue:

MCI Should facilities used for 251(c)(2) interconnection be priced at TELRIC rates?

SBC Should a non-section 251/252 service Leased Facilities such be arbitrated in a section 251/252 proceeding?

SBC Position

Q. What is your understanding of SBC position on NIM 17?

A. Sections 4.3 and 4.3.1 of the NIM/ITR Appendix provide for interconnection methods without collocation. The "lease facilities" or "facilities" referred to under NIM 17 are the facilities that MCI leases from SBC for purposes of interconnection.

SBC takes the position that issues related to such (leased) interconnection facilities are not Section 251(c)(3) UNE and thus is not subject to arbitration under Section 252 .[181] Therefore, SBC contends that issues related to leased interconnection facilities are outside the scope of this proceeding.[182]

Q. Do you agree with SBC's position that (leased) interconnection facilities are outside the scope of this proceeding?

A. This is a legal issue, outside the scope of my testimony. Staff, however, reserves the right to address this issue in briefs.

[181] SBC EX. 2.0 Albright at 29-35.
[182] Id.

MCI Position

Q. What is MCI's position on NIM 17?

A. As I understand it, MCI takes the position that the facilities it leases from SBC for purposes of interconnection should be priced at TELRIC rates.[183]

Q. How did MCI justify its position?

A. MCI did not address this issue in direct testimony. In support for MCI position in DPL NIM 17, MCI contended that *FCC rules and regulations* require that transport facilities be priced at TELTIC rates.[184] However, MCI did not indicate which specific FCC or Commission Orders, or rules and regulations, it claims require SBC to provide MCI interconnection facilities at TELRIC-based rates.

Q. Do you agree that interconnection facilities are, under the federal law, subject to TELRIC pricing?

A. No. The FCC, under the *Triennial Review Order*, narrowed its definition of dedicated transport facilities.[185] Pursuant to TRO, dedicated transport facilities include an incumbent LEC's transmission facilities connecting the wire centers or switches of this incumbent LEC.[186] They do not include transmission facilities connecting the incumbent LEC's network and a competing carrier's network. [187] As a result**,** pursuant to the TRO, interconnection (or entrance) facilities, which connect an incumbent LEC and a competing carrier's networks, are no longer subject to the unbundling

183 *8/10/04 DPL NIM 17, and NIM/ITR Appendix 4.3 - 4.3.1.*
184 *8/10/04 DPL NIM 17.*
185 *TRO, ¶¶365-369.*
186 Id.
187 Id.

requirements of Section 251(c)(3). Incumbent LECs are thus not required to provide interconnection facilities to competing carriers (or CLECs) on an unbundled basis or at TELRIC-based rates.

I note that USTA II did not vacate the portion of the TRO and the rules promulgated thereunder, that removed entrance (or interconnection) facilities from "dedicated transport facilities" and relieved incumbent LECs' obligations to provide interconnection facilities on an unbundled basis at TELRIC-based rates. Therefore, SBC, pursuant to TRO (and USTA II), is no longer obligated to provide interconnection facilities to MCI at TELRIC-based rates.

Q. May MCI lease interconnection facilities from SBC at TELRIC-based rates under Section 251(c)(2)?

A. No. MCI may not lease interconnection facilities from SBC at TELRIC-based rates under Section 251(c)(2). Section 251(c)(2) imposes on SBC the duty to provide *interconnection*, for the facilities and equipment of any requesting telecommunications carriers.[188] It does not, however, impose on SBC the duty to provide *interconnection facilities*. "Interconnection" and "interconnection facilities" are neither equivalent nor interchangeable. "Interconnection facilities" include facilities for *transport* and *termination of (inter-network) traffic*. "Interconnection", on the other hand, refers to the "physical linking of two network for mutual exchange of traffic", not the transport and termination of traffic.[189] Therefore, Section 252(c)(2) does not impose on SBC the duty to provide *interconnection facilities*.

[188] 47 U.S.C. §252(c)(2)
[189] *Local Competition Order*,¶ *175*.

Staff Recommendation

Q. What your recommendation?

A. I recommend that the Commission reject MCI's language in NIM Appendix 4.3.1. As explained above, MCI proposes language for NIM Appendix 4.3.1 (under NIM 17) would require that SBC provide *interconnection facilities* and do so at TELRIC-based rates. SBC is not required, under Section 251(c)(2), to provide MCI *interconnection facilities.* Likewise, SBC is not obligated to provide interconnection facilities (as dedicated transport UNEs) at TELRIC-based rates under Section 251(c)(3) and 252(d), pursuant to the TRO (and USTA II). Therefore, I recommend that the Commission reject MCI's proposed language.

NIM 31

Statement of Issue:

MCI **For transit traffic exchanged over the local interconnection trunks, what rates, terms and conditions should apply?**

SBC **Should a non-section 251/252 services such as transit service be arbitrated in this section 251/252 proceeding?**

SBC Position

Q. What is your understanding of SBC's positions on NIM 31?

A. As I understand it, SBC's primary position is that it is not required by Section 251/252 of the Act to provide transit services. Thus, provisioning of transit services is outside

of scope of this arbitration proceeding. In the event that the Commission decides to arbitrate issues related to transit services, SBC proposes rates, terms and conditions that should govern the provision of transit services and proposes to include these rates, terms and in Appendix Transit Traffic (instead of incorporating them into NIM Appendix).

Q. Do you have comments on SBC's positions?

A. Yes. The issues of whether transit services should be arbitrated in this arbitration proceeding is a legal matter and outside the scope of my testimony. Staff, however, reserves its right to address this issue in briefs.

Q. What are the rates that SBC proposed for transit services?

A. The rates that SBC proposed for transit services are included in the transit service appendix. For transit traffic volume of 30,000,000 MOUs (Minute of Usage) or less per month, the transit rates are identical to the Commission-approved rates for transit services.[190] For transit volume greater than 30,000,000 MOUs per month, the transit rates are higher. Id.

This *rate structure* in principle makes sense, in that it encourages carriers with larger volume of traffic to deploy alternative means to interconnect with other carriers, rather than *routing traffic through SBC tandems*. This is especially true in light of the fact that tandem exhaust is a significant problem in Illinois, as the Commission has

[190] See, *Appendix Transit Traffic Service, p7* and *SBC Illinois Tariff ILL. C.C. No 20, Part 23, Section 2, Sheet No. 3.01*.

noted in the past,[191] and as Mr. Albright observes.[192] I note, however, that SBC does not explain how it arrived at the rates designed for high volume transit traffic. Likewise, SBC does not attempt to show that the new rates and threshold traffic volume (30 million MOUs per month) are reasonable.

Q. Does MCI object to including rates, terms and conditions governing transit services in a separate appendix ("Appendix Transit Traffic Service")?

A. No. MCI does not object to SBC's including rates, terms and conditions in a separate appendix. Mr. Ricca contended that "[t]he heart of the dispute is SBC's refusal as part of this agreement provisions relating to what is referred to in the industry as 'transit traffic[.]'"[193]

Q. Does MCI raise specific criticisms of the rates, terms and conditions proposed by SBC and contained in Appendix Transit Traffic Service?

A. No. Mr. Ricca does not offer any specific criticisms for the rates, terms and conditions proposed by SBC.

Q. Does MCI attempt to refute SBC's claim that transit services are not subject to Section 251 or 252 of the Act?

A. No. Mr. Ricca does not attempt to refute SBC's claim that transit services are non-251/252 services. Mr. Ricca does not contend that transit traffic is subject to the same rules and regulations as reciprocal compensation traffic, and in particular, Mr. Ricca does not contend that transit traffic is subject to 251(b)(5).

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191 Order ICC Docket No. 01-0007.
192 SBC Ex. 2.0 at 11-13

Mr. Ricca asserts that SBC is required to provide transit services based on an unpublished order in a recent federal case.[194] Mr. Ricca does not provide this unpublished federal court order, nor does he present much in the way of specifics except the conclusion. Therefore, it is unclear how the federal court decision applies in this proceeding besides it is about transit services.[195]

Q. Are there federal or state rules and regulations governing the provisioning of transit services?

A. No. To my knowledge, there are no current federal rules and regulation governing the provisioning of transit services. As the Commission noted Verizon/SBC Arbitration Order, the FCC simply did not approach this problem.[196] Neither are there any provisions in the PUA regarding transit services.

As a result, the Commission does not have a set of well-established rules for transit services — of course, with the exception of the Commission-approved tariff and Commission's Arbitration Decisions.

MCI Positions

Q. Please describe your understanding of MCI's positions on NIM 31?

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193 *MCI Ex. 7.0 Ricca at 39*

194 Michigan Bell Tel Co. v. Chapelle, 93 Fed. Appx. 799; 2004 U.S. App. Lexis© 5985, No. 02-2168 (6th Cir. Mar 23, 2004)

195 As nearly as I can determine, the court in Chappelle stated that "[T]he D.C. Circuit's [USTA II] opinion does not forbid the use of unbundled shared transport for transiting or the provision of unbundled operator services/directory assistance." Chappelle, 2004 U.S. App. Lexis© 5985 at 3, n.1. The applicability of Chappelle to this dispute appears to me to be a purely legal issue, which I will not address, but which Staff reserves the right to address in Briefs on this point.

196 *Arbitration Award* at 35, In the Matter of Verizon Wireless Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois, ICC Docket No. 01-0007 (May 1, 2004)

A. As I understand it, MCI takes the position that terms and conditions for transit services should be included in the parties' Agreement because transit services are an integral part of local exchange services and has traditionally been included in interconnection agreements in Illinois.[197]

Q. Did Mr. Ricca explain the rates that MCI proposed for transit services?

A. No. MCI witness Mr. Ricca did not address the rates for transit services in testimony. MCI proposed language states that rates for transit services are "outlined in Appendix Pricing".[198] .

Q. How did MCI come up with its proposed rates for transit services?

A. MCI adopted a "pick-and-choose" approach in *selecting* rates for transit services. I do not find MCI's "pick-and-choose" approach appropriate or unjustifiable. There are three Commission-approved rate elements for reciprocal compensation *tandem* traffic and for transit traffic, respectively:

Reciprocal Compensation* (tandem)			Transit Traffic*	
Tandem Switching (MOU):	0.001072	<	Tandem Switching (MOU):	0.004836
Tandem Transport (MOU):	0.000201	>	Tandem Transport (MOU):	0.000189

[197] *8/10/04 DPL NIM 31.*
[198] *Appendix Reciprocal Compensation: Transit Traffic Compensation 7.1*

Tandem Transport Facility Mileage (MOU and Mileage):	0.000013	>	Tandem Transport Facility (MOU) [199][200] 0.000009

*ILL. C.C. No. 20 PART 23 SECTION 2

Apparently, for Tandem Switching, MCI – which is purchasing the service – considers the reciprocal rate ($0.001072) more favorable than the transit rate ($0.004836). For Tandem Transport and Tandem Transport Facility, the reciprocal rates ($0.000201 per MOU, $0.000013 per MOU per mile) are less favorable to MCI than transit rates ($0.000189 per MOU, $0.000009 per MOU). Accordingly, MCI picked and chose between the two sets of rates (reciprocal and transit). For *Tandem Switching,* MCI proposes to apply the Commission-approved *reciprocal* rate to *transit* traffic. For Tandem Transport and Tandem Transport Facility, MCI proposed to apply the Commission-approved *transit rates* to *transit* traffic.

Q. Does MCI provide any justification, in DPL or testimony, for its "pick-and-choose" approach in selecting rates for transit service?

A. No. MCI does not, in the DPL or its testimony, state that it adopted a "pick-ad-choose" approach to select its proposed rates for transit services. Likewise, it does not provide any justification for its "pick-and-choose" approach.

[199] For reciprocal compensation traffic, the tandem transport facility rate is based on MOU and mileage. In contrast, for transit services, tandem transport facility rate is on MOU basis, independent of mileage. The difference is the result of the Commission's Order in Docket No. 98-0396 in which the Commission did not find SBC's filed transit service rate for tandem transport facility inappropriate. This is not because the Commission disallowed transit service rate for tandem transport facility to be MOU- and mileage-based (i.e., having the same rate structure as reciprocal rate structure for Tandem Transport Facility).

[200] Tandem Transport Facility rate is $0.000013 per MOU per Mile for reciprocal compensation traffic, and $0.000009 per MOU (not based on mileage) for transit traffic. Though the rates have different structures (per-MOU versus per-MOU-per-mile), the reciprocal compensation rate is less favorable than the transit rate for

MCI argues that transit services are an integral part of local exchange services.[201] MCI, however, does not claim that transit traffic is subject to Section 251 (in particular, Section 251(b)(5)). Neither does MCI point to any FCC rule or regulation governing transit traffic. To the extent that MCI takes the position that transit traffic and reciprocal traffic should be subject to the same rules and regulation and rates, although I am unaware of its doing so, it may explain why MCI proposes to apply the reciprocal rates to transit traffic, but it does not explain or justify MCI's "pick-and-choose" between two sets of rates. In any case, this arbitration proceeding is not the appropriate platform to address issues regarding whether transit services should be subject to the same rules and regulations as reciprocal compensation traffic, or indeed what rules should transit services be subject to.

Q. Does MCI address transit traffic in its rebuttal testimony?

A. Yes. Mr. Ricca discusses transit issues in his rebuttal testimony.[202] I find Mr. Ricca's discussion uninformative and confusing. Mr. Ricca reveals that much of the underlined SBC language, which supposedly represents the portion of SBC language that MCI disputes, is not necessarily disputed by MCI: some portions of the underlined text is disputed, but other portions are underlined because MCI has had not had opportunity to consult with SBC.[203] Thus, according to Mr. Ricca's testimony, this issue has not been

Tandem Transport Facility (so long as the transit traffic traverses a distance of more than 0.70 mile over SBC Illinois network! — 0.000009 = 0.69*0.000012).

[201] *DPL NIM31*.

[202] MCI Ex. 11.0 Ricca at 19-27.

[203] Id at 23.

accurately presented to the Commission. In fact, MCI is presumably still in the process of identifying if there is a dispute with respect to much of language proposed by SBC.

Mr. Ricca, in his rebuttal testimony, states that MCI adds language to SBC's proposed Transit Appendix for MCI's own protection.[204] He does not, however, explain this language, support or otherwise offer any information that would help the Commission to resolve any real disputes between the parties.

The added language by MCI (to section 3.7 of MCI's version of SBC proposed Transit Appendix) ensures that "SBC cannot continue to dispute and not pay reciprocal compensation minutes as transit without also providing information sufficient to allow MCI to suppress billing and to bill the originating carrier appropriately".[205] Mr. Ricca does not explain why SBC should, as transit provider, pay MCI reciprocal compensation for minutes SBC transits. This proposal appears particularly inappropriate given that, from section 3.7 (Transit Appendix), it appears that MCI's "protection language" applies in situations in which MCI does not have a traffic compensation agreement with the third party with whom it exchanges traffic through SBC's network.[206] MCI should be responsible for establishing traffic compensation agreements with any parties with whom it exchanges traffic (directly or when it uses SBC as a transit provider). Mr. Ricca does not provide any explanation for why SBC should be held for responsible for reciprocal compensation payments to MCI when MCI is using SBC to transit traffic between MCI and a third party and MCI operating under a "no traffic compensation agreement" with that third party. SBC proposes to

[204] Id at 22.
[205] Id.

carry transit traffic over separate trunk groups (NIM 5), which would make it easier to keep track of this transit traffic. It is my understanding that MCI opposes SBC's separate trunking proposal for transit traffic. Mr. Ricca does not explain if the reciprocal compensation "protection" MCI seeks is still necessary if separate trunking is used for transit traffic or if, in fact, the need for "protection" is created by MCI's proposal to send transit traffic over common trunks

In summary, Mr. Ricca's rebuttal testimony fails to identify with specificity MCI's position and/or concerns and fails to explain what it is MCI is specifically proposing and why.

Staff Analysis and Recommendation

Q. What are your recommendations regarding NIM 31?

A. As explained above, there are no clear or explicit guidelines in the Telecommunication Act or FCC rules or the PUA governing the provisioning of transit services. However, the Commission certainly can and should address issues related to transit services from public policy perspectives. Transit services are essential, for the provision of telecommunications services, to some carriers – in particular, the small carriers, which do not have the resources to establish interconnection with every other carrier for the mutual exchange of telecommunications traffic. Therefore, it is a good public policy to require SBC to provide transit services. I thus recommend that the Commission require SBC to provide transit services to MCI and any requesting carriers (not as an optional service).

[206] Transit Appendix, section 3.7.

For practical purposes, I also recommend that the Commission require SBC to provide transit services as a part of parties' interconnection agreement. As MCI noted, transit services "have been traditionally included in interconnection agreements in Illinois. I thus recommend that the Commission arbitrate transit service issues in this proceeding and require parties to incorporate the rates, terms and conditions (as arbitrated) in parties' interconnection agreement.

In addition, I am advised by counsel that there may be legal reasons why such matters are properly within the scope of this arbitration.

As explained above, MCI adopted a "pick-and-choose" approach in selecting rates for transit services. MCI proposed rates, as a result, are inappropriate. I thus recommend that the Commission reject MCI's proposed rates for transit traffic as listed in Appendix Pricing.

Under SBC's proposal, the Commission-approved transit rates apply when the volume of traffic is no greater than thirty million MOUs (Minutes of Usage) in a month (1.1), and a different set of rates shall apply in a month if traffic volume reaches above thirty million MOUs (1.2). SBC does not explain or provide support for its rates proposed for larger volume of traffic. I therefore, recommend the Commission require SBC to apply the Commission-approved transit rates all transit traffic regardless whether traffic volume is greater than 30 million or not in a single month.

Finally, I recommend that the Commission adopt SBC's proposed language for transit services on Appendix Transit Traffic Service with a few modifications (below). As noted above, SBC also proposed to include terms and conditions for transit services in a separate appendix – Appendix Transit Traffic Service. I do not find SBC's

proposal unreasonable. In addition, MCI has not offered any useful information for me to evaluate its "added protection" language, which has the appearance of being unreasonable. For example, Mr. Ricca suggests the added "protection" ensures that SBC cannot continue to dispute and not pay for reciprocal compensation." But SBC as a transit provider does not have any obligation to pay for reciprocal compensation. Based on information before me, I therefore recommend that the Commission require that parties incorporate terms and conditions and rates as arbitrated in this proceeding into Appendix Transit Traffic Service. I now shall address the list of modifications I recommend to SBC proposed language for transit services.

(1) Consistent with my recommendation above, I recommend the deletion of language indicating that transit services offered by SBC is an optional services:

Transit Traffic Service Appendix:

1.3: Transit Traffic Service is ~~an optional non 251/252 service~~ provided by SBC Illinois to MCI where MCI is directly interconnected with an SBC tandem.

3.1: ~~The Parties agree that SBC ILLINOIS is not obligated under Sections 251 and 252 to the Act to provide MCI with SBC ILLINOIS' Transit Traffic Services as a means for MCI to indirectly interconnect with Third Party Terminating Carriers. MCI has the option of using the Transiting Traffic Service provided by Sbc or any other telecommunications carriers that provides similar services.~~

(2) Consistent with my recommendation above, I also recommend the deletion of languages containing the threshold traffic volume and the rates for high volume traffic:

1.1: ~~When CLEC's Transit Traffic is 30,000,000 minutes of usage or less in a single month, the rate~~ The rates for all transit traffic originated by the CLEC for that month will be:

Tandem Switching - $0.004836 per MOU,
Tandem Transport - $0.000189 per MOU,
Tandem Transport Facility - $0.0000093.

~~1.2: When CLEC's Transit Traffic is greater than 30,000,000 minutes of usage in a single month, the rate for all transit traffic originated by the CLEC for that month will be:~~

~~Tandem Switching - $0.006045 per MOU,~~
~~Tandem Transport - $0.000236 per MOU,~~
~~Tandem Transport Facility - $t0.00000116~~

NIM 24

Statement of Issue:

MCI Should facilities used for 911 interconnection be priced at TELRIC rates?

SBC Should a non 251/252 facility such as 911 interconnection trunk groups be negotiated separately?

SBC Positions

Q. What are SBC's positions on this issue?

A. As I understand it, SBC contends that MCI should be responsible for providing interconnection facilities connecting MCI's wire centers to SBC's 911 Router.[207] In short, MCI should be financially responsible for providing interconnection facilities used for access SBC's 911 services.[208]

MCI Position

Q. What is MCI's position?

[207] DPL NIM 24.
[208] Id.

A. As I understand it, MCI takes, consistent with its position on NIM 17, that "transport facilities" must be prices at TELRIC prices. That is, MCI is entitled to purchase or lease 911 interconnection facilities (i.e., facilities used for 911 interconnection) at TELRIC-based rates from SBC

Staff Analysis and Recommendation

Q. What is your recommendation?

A. Issue NIM 24 appears to be covered under NIM 17. Consistent with the parties' respective positions on NIM 17, SBC contends that 911 interconnection facilities need not be offered at TELRIC-based rates while MCI argued that MCI is entitled to lease (or purchase) 911 interconnection facilities from SBC at TELRIC–based rates. As I stated under NIM 17, Section 251(c)(2) imposes on SBC the duty to provide interconnection to SBC's network. Section 251(c)(2), however, does not impose on SBC the duty to provide interconnection facilities. As the FCC has made abundantly clear, Section 251(c)(2) interconnection, the physical linking of two networks, does not include the transport and termination facilities. Moreover, as explained under NIM 17, interconnection facilities, facilities used by competing carriers to connect SBC's network to its own wire centers or switches, are entrance facilities. As I noted above, the FCC, in its Triennial Review Order, excluded entrance (or interconnection) facilities from the definition of dedicated transport facilities. In other words, pursuant to TRO (and USTA II), SBC is not required to offer interconnection facilities to MCI at TELIRC-based prices under Section 251(c)(3). Therefore, consistent with my

position on NIM 17, I recommend that the Commission reject MCI's and adopt SBC's language – that is, SBC is not required to provide 911 interconnection at TELRIC-based prices to MCI.

NIM 22

Statement of Issue:

MCI **Does SBC's provision regarding the use of NXX codes have any application in a section establishing meet-point trunking arrangement?**

SBC **Should each party be required to bear the cost of transporting FX traffic for their end user?**

SBC Position

Q. What is SBC's position on this issue?

A. As I understand it, SBC takes the position that each party offering FX services should be required to bear the cost of transporting FX traffic to their end users.

Q. Please describe what are Foreign Exchange (FX) services.

A. Simply put, FX services allow a calling party to reach an FX customer for the price of a local call though the call is physically and geographically an interexchange call and is otherwise be subject to toll charges. Typically, a FX customer located in one local calling area will be assigned a telephone number in another local calling area so it will appear to callers making a call from the other local calling area to the FX customer that they are making a local call when, in fact, the call is transported to the FX customer

located outside the callers' local calling area. This arrangement creates what is also referred to as Virtual NXX arrangement.

Q. Is FX traffic local traffic?

A. No. FX traffic does not originate and terminate in the same local calling area (or rate center) and, therefore, it is not local traffic. The primary purpose of FX services is to allow callers to make interexchange calls (to the FX customer) at the price of a local untimed call. The service provider (such as SBC) traditionally served as the service provider for the FX customers and callers making calls to the FX customers. It was then able to collect toll charge from the FX customers to for the toll services rendered. In that sense, FX services are a type of "reverse-pay" toll services.

Q. What happens if FX customer and callers making calls to this FX customer subscribe to different service providers (such as MCI and SBC)?

A. If MCI offers FX (or virtual NXX) services to its end users, mostly likely ISPs, SBC would not be able to collect toll charge from the FX customer as it traditionally did. This is because it has no business relation with the FX customer. On the other hand, it cannot collect toll charges from the callers either because the "reverse-pay" nature of FX services. Therefore, SBC will be left uncompensated for rendering toll services.

MCI Position

Q. What is MCI's position?

A. As I understand it, MCI opposes to SBC's proposal that each party offering FX services should be required to bear the cost of transporting FX traffic to their end users.

In addition, MCI opposes to incorporating into parties' Agreement any provision regarding FX- services or virtual NXX services.

Q. How do you respond to MCI' s contention that provision of FX (virtual NXX) services does not belong to parties' Agreement?

A. It appears that MCI takes the position that SBC would incur the same costs for all jurisdictional traffic (local, FX, or IntraLATA toll) delivered to MCI's POI and therefore there is no need to make jurisdictional distinction of traffic. As a result, inter-network FX traffic should not be treated differently than local traffic for intercarrier compensation. Mr. Ricca is correct in that SBC would deliver a call (destined to MCI's end user) to MCI's Point of Interconnection (POI), regardless whether the called party is located in the same calling area as the calling party.

However, currently effective FCC and ICC rules and regulation recognize jurisdictional distinctions of traffic, and impose different rules and regulation for different type of jurisdictionally different class of traffic. Toll (IntraLATA) traffic is subject to access charge and local call is subject to reciprocal compensation. SBC will be compensated at reciprocal rate for delivering a (local) call from MCI's POI. It will be compensated at access charge rate for delivering a toll (IntraLATA) call from MCI's POI to the same end user. In other words, the compensation rate (received by SBC) for delivering a call from MCI's POI to the same end user is determined by the calling party's location, not by the actual costs incurred by SBC in the delivery of the call.

Jurisdictional distinction of traffic might have made perfect sense in the era of local monopoly where all local traffic is intra-network traffic. The emergence of interconnected networks (pursuant to the Act) certainly changed the landscape and

rendered some (if not all) rules and regulations related to jurisdictional distinction of traffic obsolete. For this reason, the FCC issued its Notice of Proposed Rule Making for inter-carrier compensation.[209] As I noted earlier in the testimony, while there might be problems associated with jurisdictional distinction of traffic (such as FX traffic, IntraLATA, Local, etc), this proceeding is not the appropriate platform to decide whether the Commission should abolish jurisdictional distinction of traffic and subject all inter-network traffic to the same rules and regulation. As a result, the jurisdictional distinction of traffic should be reflected in parties' interconnection agreement.

Staff Analysis and Recommendation

Q. What are your recommendations?

A. I recommend that the Commission reject MCI's position and require parties to incorporate provisions regarding FX (Virtual NXX) services as arbitrated in this proceeding. As explained above, the emergence of local competition (or interconnected networks) did raise questions about jurisdictional distinction of traffic. This proceeding, however, is not the appropriate platform to decide whether to abolish jurisdictional distinction of traffic. In addition, the FCC is currently reviewing rules and regulations governing intercarrier compensation (FCC 01-0132). Therefore, I recommend that the Commission require parties' agreement to reflect jurisdictional distinction of traffic, including but not limiting to, the Commission-approved local service area.

[209] FCC 01-132.

As explained above, FX traffic is toll traffic in that the calling and called parties are located in different local calling areas. However, SBC does not collect toll charge from calling party but from called party (FX customer). Therefore, it is a special type of toll services (reverse-pay toll services). The Commission has, in numerous arbitrations, permitted carriers to establish interconnection regimes in which such calls are given special treatment.[210] That is, carriers are required to exchange such traffic at the POI with neither carrier allowed to collect reciprocal compensation or long distance toll charges from the other. If the Commission is inclined to reconsider the past rulings, then I recommend that it do so in a separate industry-wide proceeding where all telecommunications carriers and interested parties can participate. Therefore, I recommend that the Commission not depart from its consistent past rulings on this issue and require SBC and MCI to exchange FX (or virtual NXX) traffic on bill-and-keep basis – i.e., not subject to reciprocal compensation or long distance toll charge.

Finally I note that SBC's concerns regarding delivering toll traffic without appropriate compensation would be alleviated if the Commission adopt Staff's recommendation under NIM 15. Under staff proposal for NIM 15, MCI is required to establish direct trunk groups to end office or tandem office if traffic between that office and MCI's network exceeds the trigger level of DS-1 during busy hour for consecutive three months. Thus MCI would be required to provide trunk groups for transporting the virtual NXX traffic back to its virtual NXX (or FX) customer.

[210] See, LEVEL3 Arbitration ICC Doc 00-0332 Order at 6-10. Golobal NAPs Arbitration ICC Doc 02-0253 Order at 17. AT&T Arbitration ICC Doc 03-0239 Order at 123.

Recip 1

Statement of Issue:

MCI **Should reciprocal compensation be determined by the physical location of the end user customers?**

SBC **a) What are the appropriate classification of traffic that should be addressed in the Reciprocal Compensation Appendix?**

b) What are the appropriate definition and scope of §251(b)(5) traffic and ISP-bound traffic in accordance with the FCC's ISP Terminating Compensation Plan?

c) Is §251(b)(5) reciprocal compensation limited to traffic that originates and terminates within the same ILEC local calling area?

d) Is it appropriate to define local traffic and ISP-bound traffic in accordance with ISP Compensation Order?

SBC Position

Q. What is your understanding of SBC's positions on Recip 1(a-d)?

A. As I understand it, SBC takes the position that the contract provision of parties' Agreement should specify categories of traffic subject to intercarrier compensation.[211] In particular, it should define traffic that is subject to reciprocal compensation in accordance with the FCC's ISP Remand Order.[212] Under SBC's proposal, "Section 251(b)(5) traffic" is traffic that is subject to reciprocal compensation under Section 251(b)(5) of the Act. It includes non-ISP bound traffic that originates and terminates in the same Local Calling Area. "ISP bound traffic" is traffic subject to FCC interim

[211] DPL Recip Comp 1 and SBC Ex. 9.0 McPhee at 4-8.

compensation plan as provided in FCC ISP Remand Order.[213] It includes traffic that originates with an end user and terminates to an Internet Service Provider (ISP) physically located in the same Local Calling Area. In short, SBC, in accordance with FCC ISP Remand Order, distinguished two types of traffic that were previously included in the term "local traffic".

Q. Do you agree that SBC's traffic classification is in accordance with the FCC ISP Remand Order?

A. Yes. First, in the *Local Competition Order*, the FCC described traffic subject to Section 251(b)(5) as traffic that originates and terminates within a local calling area — i.e., "local traffic."[214]

In its *ISP Remand Order*, the FCC indicated that some "local traffic" might not be subject to Section 251(b)(5), and that the use of the term "local traffic" created unnecessary ambiguities.[215] The FCC adopted new characterization of traffic that is subject to Section 251(b)(5) ("251(b)(5) traffic") as all telecommunications traffic not excluded by Section 251(g). Specifically, Section 251(b)(5) traffic is telecommunications traffic that is not (1) Interstate exchange access, (2) Intrastate exchange access, (3) information access, or (4) exchange services for such access.[216]

Section 251(b)(5) traffic originates and terminates in the same Local Calling Area. However, not all traffic originating and terminating in the same Local Calling

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212 FCC, Order on Remand and Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 96-98 & 99-68, FCC 01-131 (rel. April 27, 2001). (ISP Remand Order)

213 SBC Ex. 2.0 McPhee at 4-8.

214 See, *Local Competition Order*, ¶¶1034,1035; see also ISP Remand Order, ¶12.

215 ISP Remand Order ¶¶45-6.

216 47 C.F.R. §52.701(b)(1).

Area is Section 251(b)(5) traffic. Section 251(b)(5) traffic excludes ISP-bound traffic, which is carved out by Section 251(g) as information access.[217]

MCI Position

Q. What is you understanding of MCI's position on Recip 1?

A. As I understand it, MCI takes the position that reciprocal compensation should not be determined by the physical location, but rather by area code/prefix (NPA/NXX), of the end user customers.[218] It defines local traffic, for purpose of intercarrier compensation, as traffic originating from and terminating to *area code* and *prefix* (NPA/NXX) assigned to the same local calling area, instead as traffic originating from and terminating to the same local calling area. [219]

Q. How does MCI proposal differ from SBC's?

A. MCI proposal of traffic classification differs from SBC's in two ways. Superficially, MCI uses "local" where SBC uses Section 251(b)(5) traffic and ISP-bound traffic. That is, MCI makes no distinction between ISP-bound and non-ISP bound traffic. More importantly, MCI defines "local traffic" differently than SBC. MCI, for purposes of intercarrier compensation, defines "local traffic" as traffic originating from and terminating to *NPA/NXX assigned to the same local calling area* (or rate center). SBC, on the other hand, defined "local" as traffic originating from and terminating to *the same local calling area*.

[217] ISP Remand Order ¶ 52, and 47 CFR §51.701(b)(1).
[218] DPL Recip Comp 1, and MCI Ex. 7.0 Ricca at 14-19.
[219] Id.

Q. Do you agree with Mr. Ricca that "local call" as defined by MCI is appropriate for purposes of determining reciprocal compensation traffic?

A. As shown above, the FCC clearly defined the scope of traffic that is subject to reciprocal compensation.[220] MCI's definition of "local call" is simply inconsistent with FCC rules. Moreover, MCI's classification of traffic does not exclude ISP-bound traffic from traffic subject to Section 251(b)(5). Under MCI's proposal, ISP-bound traffic would be subject to Section 251(b)(5), and thus subject to reciprocal compensation. This clearly contradicts the FCC's finding that "ISP-bound traffic is excluded from section 251(b)(5) by section 251(g)."[221]

Staff Analysis and Recommendation

Q. What are your recommendations?

A. I recommend that the Commission reject MCI's position and instead adopt SBC's position. As explained above, the FCC in the Local Competition Order *initially* defined traffic subject to 251(b)(5) as "local traffic" that originates and terminates in the same local calling area.[222] In its ISP Remand Order, however, the FCC found the term "local traffic" creates ambiguities and adopted new characterization of traffic that is subject to 251(b)(5). Specifically, the FCC excluded ISP-bound traffic from Section 251(b)(5) and dropped the term "local traffic." MCI's definition of "local traffic" contradicts the FCC's rules. Therefore, I recommend that the Commission reject

220 The Local Competition Order, ¶¶1034-1035. See also, 47 CFR §51.701.
221 ISP Remand Order. ¶52.
222 ISP Remand Order, ¶12, and Local Competition Order, ¶¶1034-1035.

MCI's position and require parties to categorize traffic in accordance with FCC ISP Order.

Recip Comp 4

Statement of Issue:

MCI **Should reciprocal compensation arrangement apply to calls terminated to customers not physically located in the same Illinois local calling area, i.e., Foreign Exchange (FX) calls?**

SBC **a) What is the appropriate form of intercarrier compensation for FX and FX-like (virtual NXX) traffic?**

b) If FX and FX-like traffic must be segregated and separately tracked for compensation purposes, how should that be done?

SBC Position

Q. What is your understanding of SBC's positions?

A. As I understand it, SBC takes the position that all FX (or FX like) traffic (ISP-bound or non-ISP-bound) should not be subject to reciprocal compensation — as local traffic is — and instead should be subject to bill-and-keep regime.[223] In addition it proposed methods for segregating and tracking FX traffic.[224]

MCI Position

Q. What is your understanding of MCI's position on Recip Comp 4?

A. As I understand it, MCI takes the position that reciprocal compensation should not be determined by the physical location, but rather by NPA/NXX, of the end user

[223] DPL Recip Comp 4

customers under Recip Comp1.[225] Unlike local traffic, FX (or FX like) traffic originates and terminates in different local calling areas. Similar to local traffic, FX traffic bears NPA/NXX assigned to the same local calling area. MCI contends that FX (or FX like) traffic should be subject to reciprocal compensation as local traffic is.[226] In particular, reciprocal compensation arrangement should apply to ISP-bound FX traffic — ISP-bound traffic originating and terminating in different local calling areas but bearing NPA/NXX assigned to the same local calling area.[227]

Q. Mr. Ricca also contended that the Commission observed that there is no good efficient method to sort out the local and FX toll calls in the industry. Do you agree?

A. No. Concerned that SBC's tracking method may be short-lived in view of the pendency of the FCC's Intercarrier Compensation NPRM, the Commission was reluctant to adopt SBC's tracking method, not because it found that SBC's proposed tracking method is necessarily deficient; rather the Commission found that SBC's method might prove costly if it could not, as the Commission anticipated might be the case, be used over the long term.[228] In addition, the Commission adopted SBC's proposed alternative tracking method — using Percentage of FX Usage (PFX) factor to segregate FX traffic from other types of intercarrier traffic.[229]

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224 Id.
225 DPL Recip Comp 4.
226 Id.
227 Id.
228 Id. at 129-30
229 Id.

Staff Analysis and Recommendation

Q. What are you recommendations for Recip Comp 4?

A. Based on my understanding, neither party has presented any persuasive argument to suggest that the Commission should come to different rulings here than it did in the AT&T Arbitration Decision. I therefore, recommend that the Commission not depart from its rulings in AT&T Arbitration Decision. In particular, I recommend that the Commission, consistent with its past rulings, determine that both ISP-bound and non-ISP-bound FX (or FX-like) traffic are properly subject to a bill-and-keep regime. In addition, I recommend that the Commission also not depart from its decision on the tracking method – thus requiring parties to adopt the same tracking method as adopted by the Commission in AT&T Arbitration Decision.[230] More specifically, I recommend that the Commission order parties to replace all of SBC's proposed language for section 15 (Reciprocal Compensation Appendix): *Segregation and Tracking FX Traffic* with the following:

> 15 SEGREGATION AND TRACKING FX TRAFFIC
>
> 15.1 In order to ensure that FX traffic is being appropriately segregated from other types of intercarrier traffic, the parties will assign a Percentage of FX Usage (PFX), which shall represent the estimated percentage of minutes of use that is attributable to all FX traffic in a given month.
>
> 15.1.1 The PFX, and any adjustments thereto, must be agreed upon in writing prior to the usage month (or other applicable billing period) in which the PFX is to apply, and may only be adjusted once each quarter. The parties may agree to use traffic studies, retail sales of FX lines, or any agreed method of estimating the FX traffic to be assigned the PFX.

[230] Id.

This is what the Commission ordered in the AT&T Arbitration Decision.[231]

Recip Comp 5

Statement of Issue:

MCI **Given that SBC's proposal fro Recip Comp 2.12 does not carefully define categories of traffic that parties will exchange with each other and how such traffic should be compensated, should SBC's additional terms and conditions for internet traffic set forth in section 2.12 et seq. be included in the Agreement?**

SBC **a) What is the appropriate treatment and compensation of ISP traffic exchanged between the parties outside of the local calling area?**

b) What is the appropriate routing and treatment of ISP calls on an inter-exchange basis, either IntraLATA or InterLATA?

c) What types of traffic should be excluded from the definition and scope of section 251(b)(5) traffic?

SBC Position

Q. What is your understanding of SBC's position?

A. In summary, it appears that SBC takes the position that the term "ISP-bound traffic" as used in the ISP Order includes only traffic originated from end users to ISP providers physically located in the same local calling area. The ISP interim intercarrier compensation plan (as provided in the ISP Order) is only applicable to ISP-bound traffic, but not to ISP and Internet traffic (excluding *ISP-bound* traffic).[232]

[231] Id.
[232] DPL Recip Comp 5 and SBC Ex. 9.0 McPhee at 6-7.

MCI Position

Q. What is your understanding of MCIs' position?

A. As I understand, MCI simply opposes the inclusion of SBC proposed language in section 2.12 in parties' Agreement. It contends that it is not provided with a clear explanation of what this language is intended for. That is, it claims ignorance of the intent of the language.[233]

Q. Does MCI provide support for its position on MCI Recip Comp 5 in testimony?

A. No. MCI Witness Mr. Ricca lists the issue on page 14 of his testimony.[234] However, he does not directly address issue MCI Recip Comp 5. In particular, Mr. Ricca does not explain which portion of SBC's proposed language he (or MCI) finds to be confusing or misleading.

Q. Does MCI respond to SBC for SBC's position on SBC Recip Comp 5?

A. Yes. Mr. Ricca, in his rebuttal testimony, contends that the FCC's ISP Remand Order "did not require that ISP traffic compensated under that order to be delivered to an ISP provider 'physically located within the ILEC local exchange area' " as suggested by Mr. McPhee.

Q. Do you agree with Mr. Ricca?

A. No. To the contrary, I agree with Mr. McPhee that term "ISP-bound traffic" in the ISP Remand Order refers to calls from end users to ISP providers physically located in the same local calling area. This is the logical conclusion for the following reasons.

The FCC, in its ISP Remand Order, noted that "an ISP's end users customers typically access the Internet through an ISP server located in the same local calling area."[235] Therefore, the ISP traffic referred in the ISP Remand Order is traffic between end users and ISP providers located in the same local calling area.

The FCC, in the Local Competition Order, *originally* characterized traffic subject to 251(b)(5) as "local traffic" – originating and terminating in the same local calling area. In ISP Remand Order, the FCC found the term "local traffic" misleading – it may include traffic that is not subject to 251(b)(5), and thus the FCC revised the characterization of traffic subject to 251(b)(5). The FCC excluded ISP bound traffic from 251(b)(5). This is another indicator that is "ISP-bound" traffic in the ISP Remand Order refers to traffic between end users and ISP providers located in the same local calling area. That is, ISP traffic between end users and ISP providers located in different local calling areas was unlikely to be confused with local traffic and would not have required the FCC to distinguish between local traffic and 251(b)(5) traffic as it did.

Q. Does this dispute in interpreting ISP Remand Order have a significant impact given your recommendation for ISP-bound FX traffic?

A. No. I recommended earlier in this testimony that the Commission not depart from its past rulings regarding intercarrier compensation for ISP-bound FX traffic. That is, I recommended that the Commission subject ISP-bound FX traffic to bill-and-keep, the same as for non-ISP-bound FX traffic. With ISP-bound FX traffic carved out, the

[233] DPL Recip Comp 5.
[234] MCI Ex. 7.0 Ricca at 14.

remaining traffic terminating with ISP providers is typically, if not exclusively, traffic from end users to ISP providers physically located in the same local calling area, which under SBC's proposal is subject to the FCC's interim intercarrier compensation plan (as provided in ISP Remand Order). That is, for practical purposes, the dispute in interpreting FCC's ISP Remand Order will have little importance if the Commission decides not to depart from its past rulings for ISP-bound FX traffic.

Staff Analysis and Recommendation

Q. What is your recommendation?

A. As noted above, the FCC interim intercarrier compensation plan (as provided in its ISP Order) applies to ISP-bound traffic, traffic originating from callers to an ISP provider physically located in the same local calling area. It, however, does not apply to Exchange Access, Information Access, or Exchange Access for such access (excluding ISP-bound traffic). For example, it does not apply to ISP traffic that originates and terminates in different local calling areas. I therefore, recommend that the Commission require parties clarify that the FCC's interim intercarrier compensation plan is only applicable to *ISP-bound traffic*, which includes only calls from end users to ISP providers physically located in the same local calling area.

Q. Does this conclude your testimony?

A. Yes.

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[235] ISP Remand Order, ¶10.

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VERIFICATION

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

04-0469

I, QIN LIU, do on oath depose and state that if called as a witness herein, I would testify to the facts contained in the foregoing document based upon personal knowledge.

Qin Liu

SIGNED AND SWORN TO BEFORE ME THIS 31st DAY OF August, 2004.

Esperanza DeLosSantos

NOTARY PUBLIC

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